

# REMOVING OBSTACLES TO JOB CREATION: HOW CAN THE FEDERAL GOVERNMENT HELP SMALL BUSINESSES REVITALIZE THE ECONOMY?

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## HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT  
& GOVERNMENT PROGRAMS

OF THE

COMMITTEE ON SMALL BUSINESS  
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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**Thursday, April 21, 2005**

HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND  
GOVERNMENT PROGRAMS  
COMMITTEE ON SMALL BUSINESS  
*Washington, D.C.*

The Subcommittee met, pursuant to call, at 10:07 a.m. in Room 2172, Rayburn House Office Building, Hon. Marilyn Musgrave [chairman of the Subcommittee] presiding.

Present: Representatives Musgrave, Westmoreland and Lipinski.

Ms. MUSGRAVE. I now call this hearing on the Subcommittee on Workforce, Empowerment and Government Programs to order.

Good morning. Thank you all for being here today as we examine the potential roadblocks to success for America's small business. Specifically we are going to be looking at problems either generated or neglected by the federal government that prohibit job growth and prosperity in America's small business community, along with potential solutions to these problems.

I look forward to working with all of you, especially our distinguished Ranking Member from the State of Illinois, Mr. Lipinski.

I am sure most of you are aware small businesses are the driving force behind our economy. They represent 99 percent of all employers. More than half of all U.S. employees work for small firms, and they generate between 60 and 80 percent of all of the new jobs in America.

Small businesses are the main component in our economic engine and we, as your elected officials, must do all we can to foster—not hinder—their growth. Running a small business is not easy, and what we must do is to relieve some of the burden that comes directly from Washington, D.C.

Unfortunately, Congress and the federal government have been fond of passing new laws and imposing mandates and regulations on businesses. Congress has been working in recent years to diminish that burden, legislation such as the Paperwork Reduction Act, the Small Business Paperwork Relief Act and more recently the Jobs and Growth Tax Relief Reconciliation Act of 2003.

However, even with the passage of these bills federal regulatory tax and compliance burdens continue to be cited by many owners as the most significant problems facing small businesses. For example, according to a report recently published by the SBA's Office of Advocacy, Americans spend \$843 billion complying with federal regulations.

The average cost per employee of regulations to small business is \$6,975, which is 60 percent higher than the cost of large businesses. To put it another way, Americans spend 8.22 billion hours to comply with federal paperwork requirements. Small business tax forms alone account for 500 million hours in compliance time each year. This is time that should be spend growing a business or time spent with family.

It is not just the regulatory burdens that hurt small businesses. The health care marketplace is especially difficult for small firms. The cost of health insurance has become prohibitive for many of America's small businesses and their employees. Of the 45 million uninsured Americans, 60 percent work for small employers who cannot afford to purchase health insurance for themselves or their employees.

Congress is exploring mechanisms such as association health plans, expanding the use of health savings accounts and flexible spending accounts and increasing tax credits specifically for the purchase of health insurance, all of which would help small businesses use market forces to make health care more affordable.

The Tax Code is yet another government intervention particularly onerous to small businesses. Despite the significant tax relief Congress and President Bush have provided to small businesses, taxes are still too high, and the Tax Code is ridiculously complex.

A recent study conducted for the SBA's Office of Advocacy found that tax compliance cost \$1,200 per employee for very small firms versus \$562 for large firms. That is a significant handicap for a small business as every extra minute spent deciphering the Tax Code is one less minute that an owner can spend growing his or her business, providing new jobs and revitalizing our economy.

We must continue to strive for lower levels of taxation along with simplicity and permanency in our Tax Code. I am very eager to hear the testimony today, and I sincerely hope we can help further the debate for creative ways the federal government can assist small businesses.

[Chairman Musgrave's statement may be found in the appendix.]

I would now like to yield to the Subcommittee's Ranking Member, Mr. Lipinski, for any opening statement that he would like to make.

Mr. LIPINSKI. Thank you, Madam Chairman. I am honored to be serving as the Ranking Member on this Subcommittee, and I very much look forward to working with you, working together on this Committee.

Ms. MUSGRAVE. Thank you, Mr. Lipinski.

Mr. LIPINSKI. Thank you. Today's small businesses face an array of challenges that hinder their ability to do what they do best—cre-

ate jobs. As we have heard time and again, most of the net new jobs in this country are created by small businesses.

Unfortunately, the burden of complying with unending federal regulations, the soaring cost of health care and the difficulties faced in finding and retaining a skilled workforce all create significant barriers to success for our small businesses.

The ability of small business owners to start up, expand and compete in the world marketplace is diminished if they are weighed down with encumbrances that larger businesses or foreign competitors do not share.

One such serious problem is the growing regulatory burden. Every witnesses that has testified before the Committee has put regulatory burden at or near the top of their list of impediments to the vitality of small businesses.

A recent study shows that for firms with fewer than 20 employees, the annual cost of regulatory compliance is nearly \$7,000 per capita. This cost is much higher than that borne by larger firms. Small businesses simply do not have the manpower and resources to comply with these regulations.

Recognizing this, Congress created tools such as the Regulatory Flexibility Act, RFA, which requires government agencies to analyze the impact of regulations on small business and to consider less burdensome alternatives.

Despite much talk about the problem in recent years, the cost of rules and paperwork requirements have only increased for our nation's 23 million small businesses. We must do more to ensure enforcement of the RFA and related tools so that we can achieve our goal of reducing the regulatory burden on small businesses while protecting the health, safety and fair competition.

Other areas that we will be hearing about today are equally daunting. The rising cost of providing health care coverage is an enormous challenge for small business owners. With less bargaining power, small firms pay even more for coverage than do large firms. Costs have risen to such an extent that it is now a major cost factor for businesses that offer health care benefits.

The result is a large proportion of uninsured Americans are self-employed or work for small businesses. Without a health care program, it is difficult to attain and retain top workers, so it is difficult if small businesses have a health care program or they do not have it.

Last month the full Committee heard testimony regarding a number of health care proposals. One plan, H.R. 765, Fair Care For The Uninsured, is one that I introduced with Representative Mark Kennedy in order to provide a refundable tax credit for the purpose of health insurance by those who are not offered coverage by their employer.

Another we heard about was H.R. 525 by Representative Johnson and Ranking Member of the full Committee Velazquez which would create association health plans. I look forward to hearing more about your ideas about health care and what can be done, what we can do to help small businesses in this area.

Another expensive task for small businesses is finding skilled labor or, better still, retraining skilled workers to move from old economy jobs to the new economy job market. With a shortage of

skilled workers especially in trade industries, we need to work to find solutions to this problem.

These issues and others that will be raised today are very important to the success of our small businesses. They are not unsolvable problems, but we need to work on finding innovative solutions. Innovative thinking is something small businesses are especially good at and so I look forward to the testimony we will hear today.

I would like to thank Chairman Musgrave for holding this hearing. Clearly the issues our witnesses will share with us are significant concerns for so many of our nation's small businesses today. It is important that we carefully examine all options and identify and work on these problems to truly relieve entrepreneurs so that they can do what they do best—put Americans to work.

Thank you.

Ms. MUSGRAVE. Thank you, Mr. Lipinski.

I would also like to recognize Mr. Westmoreland, the Member from Georgia, at this time.

Mr. WESTMORELAND. Thank you, Madam Chairman. I appreciate your willingness to hold this hearing, and I also want to thank the witnesses for coming to testify.

We are from the federal government, and we are here to help you. Those are things that we hate to hear as small business people, but I think with this Subcommittee what we are here today to do is to try to figure out how we can help you, if it is possible that we can help you.

I am a small businessman, and I know that the most help the government can do for me is to get out of my business, but we want to see if we can help remove some of those obstacles that we have created in our regulations and also offer a chance for job creation because we are aware that approximately 75 percent of the net new jobs come from small business and that 99 percent of all employers are small business people and so we understand that, and we want to do what we can to help, as funny as that may sound.

I know that there are some small businesses out there that are doing great. They are obviously doing something right. There are also some that are not, and what we need to figure out is why they are not doing good. Is it their fault? Are they bad business people? Are we doing enough to offer entrepreneurs the ability to go into small business?

There is nothing greater to me in this country than being an entrepreneur and owning a small business. Are they taking advantage of all the resources that we do offer for small businesses that were designed to help them specifically? Is there a problem with those resources and programs that we do offer? Are they operating properly, or is it too much hindrance from us?

I look forward to hearing what the witnesses have to say today.

Mr. Wilson, it is good to see you back before this Subcommittee again. I know that the Small Business Development Centers in Georgia are a big help to us, and they are spoken very highly of.

Mr. Pressly, I think you and I have something in common. I have read your testimony, and there is so much truth in there. I am glad



you are here to testify to those things that we face every day in our business.

Also, Mr. Dean, a heating and air conditioning business. I have worked with that for years and all the environmental problems that are caused today or people think are caused by the home building industry.

I look forward to all of your testimony, and we will see if we cannot come up with something to try to help you.

Thank you, Ms. Chairman.

Ms. MUSGRAVE. Thank you, Mr Westmoreland.

I would like to welcome the panel again. You probably know the time constraints that we are under. We have a little bit of guidance for you in that area, so we will try to stay on time.

The first person that we would like to hear from this morning is Dr. McClelland, John McClelland, Vice President of Government Affairs from the American Rental Association. Welcome, Mr. McClelland.

#### **STATEMENT OF JOHN MCCLELLAND, AMERICAN RENTAL ASSOCIATION**

Mr. McCLELLAND. Thank you, Madam Chairman, Mr. Lipinski and other distinguished Members of the Subcommittee on Workforce, Empowerment and Government Programs. I am pleased to be here today to represent the American Rental Association. I am going to summarize my testimony, but I ask that the full extent of my comments be included in the record.

Before I get into specific issues, let me just give you a little bit of background so there is no confusion. The American Rental Association, first of all, began in 1955. We are about to have our fiftieth anniversary next year. We began in Moline, Illinois, with 22 members mostly from the midwest.

Now, even though our headquarters remains in Moline, we have more than 7,500 rental businesses and 1,100 manufacturers who supply product into the rental industry as members of ours. The rental industry generates about \$24 billion in revenues annually.

We represent large and small members. Just as an example, one of our largest members is United Rentals. They have a market capitalization of \$1.4 billion, and they have in excess of \$3 billion in annual revenues. Then we have the small, family-owned business.

Frankly, the majority of our members are those small, family-owned businesses, but we do have both sides of this equation, and I think that that is an important point to make when we start discussing some of the things that we believe make it difficult for our small business members to compete.

We think, by the way, that this competition is essential to the success of our industry and in making our industry better so we are not against the competition. We just like to see as level a playing field as we can get.

A.R.A. members rent tools, equipment and party supplies. Party, by the way, is one of the big, growing areas of our business. We provide these goods and services through we call a rent-to-rent contract so it is not rent-to-own. It is not a lease.

The rental business is also pretty capital intensive. In 2004 we have estimated that the value of the rental inventory is about \$34.1 billion and that annually rental businesses spend between \$3.4 billion and \$6 billion to replace used equipment.

Recent changes in tax policy like the bonus depreciation that expired last year, but also the expansion of Section 179 provisions, have really helped the rental industry and especially with 179 our small members of ARA to really increase their investment in their rental inventory.

Now let me address three very specific issues in federal policy that affect the investments in jobs in the rental industry. The first one is health care. This has been mentioned by the Chairwoman and the Ranking Member.

We belong to the Coalition for Access and Choice Through Association Health Plans. That is a group of about 150 associations that want the opportunity to provide health care to our members and our members' employees through our association.

By the way, just another piece of information. ARA actually owns an insurance entity that provides liability and other types of insurance to our members, but we are not, as you know, able to provide a nationwide ERISA exempt health care plan through our association insurance company.

Let me illustrate exactly how this affects us. I mentioned United Rentals. United Rentals has over 700 locations nationwide, so we may be in Westminster, Colorado, and we may have a family-owned business on one corner, and down the street is United Rentals. Those two businesses basically operate in the same business environment and are competing for the same labor pool, mechanics, counter people, those kinds of employees.

United Rentals has a company health care plan that is ERISA exempt. They offer that health care plan to all their employees nationwide, and I would say that it is a very generous and well-operated plan. We applaud our members for doing those kinds of things and offering those kinds of benefits to their employees.

However, our small business members are basically held captive by the private insurance market. So who are you going to go to work for, the company that says here is a generous insurance plan and wages to go along with that or the company who is having a really difficult time finding an insurance program that offers any kind of benefits to keep up with the ERISA exempt plan?

I think that the answer is pretty clear, and that is really the crux of the issue for us and for our members is that we have essentially an unfair playing field out there that is created by this federal policy that makes it very difficult for our small business members to compete.

We have a lot of second and—excuse me?

Ms. MUSGRAVE. Quickly, what are your other two points, Dr. McClelland?

Mr. MCCLELLAND. Yes, ma'am. We have a lot of second and third generation businesses in ARA. The estate tax is very egregious. When shareholders of big companies die, their estates are liable for

the taxes. When small business owners pass away, we often have to sell assets of the business.

Large companies, the capital stock of the business is not affected when a shareholder passes away. In small businesses, it is exactly the opposite, and often times even though we have insurance and estate planning we spend money on that, and that is money that is not being spent to hire employees or to reinvest in the business.

Finally, just a few words about liability reform. We own all of our equipment. We accept the risks of ownership, but we do not always have custody of that equipment. We would like to let you know that we would support and have in the past supported caps for non-economic damages of \$250,000 except in very limited circumstances, and we have also supported federal actions so that renters, sellers and leasers other than manufacturers may be held liable only if they are directly at fault for some hardship that is caused.

That completes my comments, and I will take any questions that you might have.

[Mr. McClelland's statement may be found in the appendix.]

Ms. MUSGRAVE. We will do questions a little later. Thank you, Mr. McClelland.

The second witness is Mr. Richard Dean, Senior Vice Chairman, Environmental Systems Associates, from Columbia, Maryland, Air Conditioning Contractors of America.

Mr. Dean?

#### **STATEMENT OF RICHARD DEAN, ENVIRONMENTAL SYSTEMS ASSOCIATES**

Mr. DEAN. Thank you. Chairman Musgrave, Ranking Member Lipinski and Members of the Subcommittee on Workforce, Empowerment and Government Programs of the House Committee on Small Business, on behalf of ACCA thank you for providing me the opportunity to testify today on this very critical issue to small business.

ACCA is the national non-profit trade association that represents the technical, educational and policy interests of the men and women who design, install and maintain indoor environmental systems. We have over 50 federated chapters with nearly 5,000 local, state and national members. Most of our contractor members are family-owned small businesses, and many of these small businesses are in their second and third generation of family ownership.

As the Chairman said, in addition to being a member of ACCA, I am an owner of Environmental Systems Associates in Columbia, Maryland, and have 21 full-time employees. We have provided residential heating and air conditioning services to customers in the Baltimore/Washington, D.C. corridor since 1972.

Our industry faces many challenges, and one that is becoming a crisis is the lack of qualified air conditioning and heating technicians to service America's homes and businesses. Unlike a variety of industries across the country, the HVACR industry continues to struggle to attract young men and women into our industry.

There are several reasons for this shortage. One reason is the tendency by some educators to steer high school students away

from vocational education and only towards four year colleges. Our industry feels very strongly on the importance of education, but we remain concerned that vocational education, which would train men and women to begin as HVACR technicians, is perceived as a second class career choice compared with attending a four year college.

This could not be farther from the truth. In order to become an air conditioning journeyman, which is the first step in becoming a qualified technician that can perform service calls for my company, an individual must complete 144 hours of classroom instruction per year and 2,000 hours of on-the-job training in the field every year for a minimum of three years.

One example of this training is obtaining EPA Section 608 refrigeration recovery training, which trains journeymen on the proper handling of ozone depleting refrigerants used in modern air conditioning units.

In July 2004, ACCA, along with other organizations in the HVAC industry, wrote to President Bush asking him to form a new dialogue with our industry to address this situation. I will submit a copy of that letter with my written testimony.

It is imperative that the federal government, through the Departments of Education and Labor, work with our industry to remove the negative stigma that training to be an HVACR technician is somehow not good enough. On the average, a well-trained technician in my company can earn as much as \$40,000 to \$50,000 a year upon entering the industry.

In addition, nearly 40 percent of the businesses in our industry are run by former technicians. With hard work and dedication, becoming an air conditioning technician in your early twenties can be an avenue to owning your own small business and help to grow the economy and create more jobs.

We feel that the Departments of Education and Labor should work together to educate school guidance counselors on the benefits of joining our industry and making it a lifelong career.

Another recommendation that our industry feels would address our labor shortage would be to develop a program to train displaced manufacturing workers to become air conditioning and heating technicians. In many cases, the recent closure of manufacturing facilities has resulted in tremendous job loss with repercussions being felt throughout a community. Also, in most cases these jobs are lost forever as the manufacturing facility is moved offshore.

These skilled workers are just the type of workers our industry desperately needs, and our industry would be very attractive to displaced manufacturing workers because our jobs cannot be moved offshore.

This is an opportunity for Congress and the Administration to work together to create programs to fund training for displaced manufacturing workers, essentially create a program similar to the Carl D. Perkins Vocational and Technical Education Program that funds vocational education for young students, yet apply to individuals forced into a career change through the closure of manufacturing facilities.

Congress has looked at similar legislation to help small businesses cope with training costs with the Skilled Workforce En-

hancement Act, which I will discuss in more detail in my submission for the record.

As I stated at the start of my testimony, most ACCA member companies are family-owned businesses. Your support for these measures would demonstrate recognition of the unique challenges that our small business contractors face every day in running our businesses. By helping to address these issues, Congress can go a long way in assisting job growth while also providing a real benefit to American consumers.

Thank you for your attention and the opportunity to present our views before your Subcommittee.

[Mr. Dean's statement may be found in the appendix.]

Ms. MUSGRAVE. Thank you, Mr. Dean.

At this time we will hear from Mr. David Pressly, president of Pressly Development Company, Statesville, North Carolina, National Association of Home Builders. Welcome.

Mr. PRESSLY. Thank you, Madam Chair.

**STATEMENT OF DAVID PRESSLY, PRESSLY DEVELOPMENT  
COMPANY, INC.**

Mr. PRESSLY. Madam Chair, I am David Pressly. Thank you and Members of the Subcommittee.

I am the president of my development company, Pressly Development Company, of Statesville, North Carolina, and I am the 2005 first vice president of the 220,000 member National Association of Home Builders.

Intense competition within the home building industry is good for consumers, but it also means small profit margins. Forcing builders to absorb the cost of inefficient regulations drives potential buyers out of the market, meaning less work for our members and fewer jobs for the people we employ. To give you an idea of some of the magnitude of the problem, for every \$1,000 increase in the price of a home, 240,000 households are priced out of the market.

My written testimony touches upon regulations at HUD, Agriculture, Interior and the Environmental Protection Agency. I would like to spend some of my time here today discussing a particularly costly and bureaucratic regulatory burden, and that is the stormwater permitting process.

The EPA is responsible for establishing a stormwater permitting program to address water runoff from residential construction projects. These fundamentally flawed regulations have a significant economic impact, adding up to six percent to the cost of development land.

A six percent increase in development costs translates into an extra \$3,000 charge, which excludes about 725,000 households from purchasing a home. Because of the extra compliance costs, America has fewer homeowners, less economic development and fewer jobs.

The National Pollutant Discharge Elimination System or NPDES program established by the EPA requires a permit for the discharge of pollutants into the waters of the United States. A permit

is needed for all construction activity that disturbs one or more acres of land or less if it is part of a subdivision.

To be covered by the permit, a construction site operator must prepare a stormwater pollution prevention plan and file a notice of intent. To give you some sense of the complexity of the plans, the EPA's guidance for writing just the prevention plan is over 40 pages long. It is much like this book I have in my hand.

In many areas of the country construction site operators must obtain two or three permits because most states and municipalities have their own stormwater regulations.

In 2003, EPA issued an information request regarding the cost of filling out the notice of intent and developing the prevention plan. They estimated it would cost approximately \$1,300. The information NAHB gathered from our membership showed the cost estimates were radically off base. Our members' estimates ran from \$2,300 up to \$7,000.

This is just the cost for EPA's paperwork and does not include other costs such as obtaining the required state and local permits or for the actual on-site devices to control this water runoff.

The NPDES permit requirements were originally designed to limit the effluent from industrial processes and municipal sewage treatment, but now the EPA has pigeonholed residential construction stormwater into the industrial discharge program, adding financial and bureaucratic burdens resulting solely from the Agency's wrongful application.

Enforcement plays an important role in ensuring the success of the NPDES program and improving the health of the nation's waters. To be effective, it must include education and compliance efforts and be timely, predictable and tied to on-the-ground environmental impacts.

To date, however, this has not been the case. Internal wrangling within the Agency makes it impossible to follow the traditional compliance first/enforcement second approach. Further, EPA regularly seeks out actionable violations and levies significant fines for paperwork violations that have little bearing on environmental protection.

For example, a builder in El Paso, Texas, received a \$5,500 fine for not filling the proper paperwork, even though he had all the necessary controls on his site and there was no environmental impact. A \$5,500 fine can quickly put a small home builder out of business.

In conclusion, EPA's implementation and enforcement of stormwater programs places an unnecessary burden on the building industry while arguably failing to result in demonstrable improvements to the quality of the nation's waters.

Madam Chair, I thank you again for the opportunity, and I look forward to entertaining your questions.

[Mr. Pressly's statement may be found in the appendix.]

Ms. MUSGRAVE. Thank you for your testimony.

Our last witness will be Mr. Donald Wilson, president of Association of Small Business Development Centers, from Burke, Virginia. Welcome.

**STATEMENT OF DONALD WILSON, ASSOCIATION OF SMALL  
BUSINESS DEVELOPMENT CENTERS (ASBDC)**

Mr. WILSON. Thank you, Chairwoman Musgrave and Mr. Lipinski and Congressman Westmoreland. We are delighted to be here. We appreciate the invitation, and I am here representing the Association and the roughly 5,000 men and women who work every day trying to help small business survive and grow and create jobs in this country.

You have all attested to the fact that the people who create jobs in this country are small business, roughly 75 percent of net new jobs. Conditions out there, and these gentlemen have said it very well, are not good for small business in this country right now, despite I think heroic efforts on the Congress in a number of areas. The fact of the matter is job creation in this country is in trouble, and it is because small businesses are in trouble.

On a historic basis, four years after a recession started the number of jobs in the country would normally be roughly four percent above the job level when the recession started. We are at about .3 percent above where we were in March of 2001. That is a staggering number.

We have about seven million people unemployed, and the most staggering number is we have almost 400,000 fewer private sector jobs today than we did when the recession started, despite the fact that the unemployment level is not so bad, and much of that is due to people who have given up and quit looking for work.

Now, the issues that have been discussed, everything from federal regulations to state regulations, health care costs, lack of skilled workers, these are issues that have been around for decades. They worsen from time to time, but they are always there.

Perhaps the most classic, the cost of empowering a new worker. Payroll taxes in this country are astoundingly high, and they keep getting higher. As we look at the social security situation, we see that many of the folks who are proposing solutions are proposing higher payroll taxes.

Our clients at the SBDCs over the last 25 years, and I am delighted to say this is our twenty-fifth anniversary year. We have served over 11 million small business owners and aspiring entrepreneurs, and the cost of hiring is a serious issue.

There cannot be any higher issue than regulatory burdens. All of these men have testified to that. You know, we talk about what we are doing about regulation. You take Dr. Graham over at the White House, you take Tom Sullivan and all the people, the Paperwork Reduction Act, all of the things we are trying to do, but if you pick up the Federal Register at the end of the year it is about 70,000 pages year in and year out.

Despite the efforts to make regulations more small business friendly, the number of regulations that these industries and all small business owners have to deal with continue to grow.

For about six years now we have come forth with an idea of H.R. 230 to help small businesses comply effectively on a cost effective basis with the regulations that continue to grow. To the great credit of this Committee and to the House, that bill has been passed three times. It dies in the Senate. Much of that is due to the oppo-

sition of OMB because they maintain that \$5 million just simply cannot be afforded out of a \$2.5 trillion budget. I think that is preposterous.

Now, we say that job creation is job number one, and we say that small business does it and yet we look at what the federal government is investing. Investing. I am not talking about tax relief. I am talking about investing out of the \$2.5 trillion.

When I was on the Hill 30 years ago, about six-tenths of one percent of the budget went to assist small business. That number is now down to less than four one-hundredths. The Small Business Administration resources have declined by 40 percent in the last four years.

The most staggering figure about the ASBDC program is the fact that despite the continuing increase of people who come to us for assistance, we are now not able to provide it to them. The hours for counseling last year went down nearly 100,000 hours despite the growth in clients.

These people are coming. They are looking for management assistance, and why would they not be? A person who starts a bakery often is a great cook, but does not know how to handle the books, does not know how to manage the business. It is not because they are ignorant. We have very little management training in this country.

In your district alone, let me give you two classic examples, Chairman Musgrave. An assisted living facility. ASBDC counselors helped a young woman there to start her assisted living facility, helped them get a \$450,000 SBA 504 loan, helped them get a \$750,000 commercial loan from the Bank of Hugo-Limon, and as a result seven jobs created.

In Julesburg, Colorado, these folks we are talking about are steelworkers, not college folks. The SBDC there, the counselor there helped a young gentleman by the name of Jim Rouse start a heavy equipment training school, helped him with his business plan, helped him work with the Community First National Bank of Sterling, 11 jobs created and a skilled workforce to run heavy equipment.

This type of thing is going on every day in SBDCs and yet the dollar resources, the real dollar value, continues to decline as that program has been flatlined for the last five years in the budget.

Small business has got to have regulatory compliance assistance. It cannot wait any longer. E-government is fabulous. You can put all the regulations you want up on the web, but it will take five Philadelphia lawyers to read them. The average small business person, just having the reg on the web is not going to help them figure out the cost effective way to do it.

When I was with the National Tire Dealers and Retreaders Association, the stormwater runoff rule. We understood that rule and the threat to the retreading industry very well. I spent a year working with EPA because they were applying some of the rules to the retread industry, and when I was on the Hill with Congressman Broyhill and he was involved in writing that regulation we understood that it did not apply to the retread industry. After a year EPA finally said you are right. It does not.



The average retreader would have never known that. They would have spent endless millions throughout the retread industry complying with that rule when it did not even apply to them. Only because they have an association and the association ran a regulatory compliance assistance program that I initiated, and that is what is needed nationwide.

Congressman Sweeney working with the New York Department of Labor understands that. You folks have voted on it repeatedly. We need this Administration to back H.R. 230 and the House to pass it again and get it passed in the Senate, and we need additional resources to provide management training assistance to the small business people in this country who cannot flourish and create jobs without it.

Thank you very much.

[Mr. Wilson's statement may be found in the appendix.]

Ms. MUSGRAVE. Thank you for your testimony today.

The testimony was excellent. Your written statements will be entered into the record without objection.

When we talk about these regulations—this is for anyone on the panel—is there one agency that is more difficult to deal with than the others? Is there one that rapidly comes to mind, and is there one particular agency that is unresponsive when approached? Any one of you could answer that question.

Mr. PRESSLY. Madam Chair, I have told you of our experience with the Environmental Protection Agency, and I have given you examples of how, first of all, we think we have been aggregated. We know we have been aggregated with large industries that generate quantifiable pollutants and municipal wastewater treatment plants, and here we are small home builders across the country dealing with just raw land.

We do everything we can to keep that silt from washing off our site. We think that we are the first to say that we want to contain that silt on our site. We do not want any of that silt to go into streams. We want to do it in an engineering sense, in a scientific way to make sure that did not go off the site.

We think it is completely unreasonable to link our industry with a heavy industrial polluter. I come from the deep south where they have dying mills. Those mills put predictable waste into our wastewater treatment system. We know how to deal with that.

We are dealing with just dirt that runs off a site, and we want to stop that. We want to make sure it does not, but we want our regulations to reflect who we are and what our purpose is.

Thank you, Madam Chair.

Ms. MUSGRAVE. Thank you.

Mr. Dean, you talked about the need for vocational education. I started out as a school board member because I was very interested in education, and I have a great deal of respect for any line of work. You know, I was dismayed that very often there is the stigma attached to vocational education that you alluded to.

Could you tell me how you are trying to work with educational folks to get these counselors talking to students? I mean, I believe

in academic rigor, as I am sure you do too, a great deal of academic rigor, but there are some students that would be very well-suited to pick a career in vocational education.

Could you elaborate on your efforts in that area, please?

Mr. DEAN. Our trade association has an outreach to go out to high schools and talk to classes and to guidance counselors about what young men and women can make in dollars and cents—that seems to be very important to them at that age—and the careers that are available.

I currently have three students who are involved and I have enrolled in a local training program that is actually run by our trade association at a local community college to get them through the 144 hours of classroom. I am paying them for the 2,000 hours of work.

We have an apprenticeship program in many of our jurisdictions. Our problem is that it is a very expensive process when most of these young men and women from a business standpoint cannot write a bill for four years. You know, they cannot generate a service ticket and so they are helpers and kind of locked into that.

Some relief as this Skilled Workforce Enhancement Act provided for would be very helpful to us, but it is through the education department. You point out I think one of the most powerful things that we do and can continue to do is to go into high schools and talk to the guidance counselors and show them the opportunities that we have.

Ms. MUSGRAVE. Thank you very much.

Mr. PRESSLY, recently I held a forum on affordable housing in Fort Collins, Colorado. That is a front range community in Colorado. As you might be aware of the fact, there is a lot of growth there. Homes are very expensive. People like teachers or firemen or policemen have a very difficult time getting into a home because their salary just is not enough for them to have their beginner home, if you will.

I think many people are unaware of why homes cost so much. You know, they want government assistance, i.e., the taxpayers, to help out for affordable housing. Could you address some of the issues that make homes so expensive?

Mr. PRESSLY. They are a series, and I have touched on several of those aspects in my testimony, Madam Chair. We recognize that for most American families the pathway to middle class is through home ownership.

That is why the members of our association struggle day in and day out to help that first family, whether it is a traditional husband and wife or whether it is a single mother, get into that first home because if that initial barrier is set too high through costs, whatever those costs are, that family or that single mother will never see home ownership and be locked out of the middle class forever.

I have given you several examples. There are many more in my written testimony about these regulations that impact the cost of a home. The home building industry is intensely competitive. An-

tagonists often say well gee whiz, that cost savings goes into that builder's pocket. Well, if there were a monopoly in home building across America that would be true, but there are so many of us who are very small business people, men and women in that building industry, and trying as hard as we can to ensure that we get those initial families.

That is my primary purpose in being with you this morning is to say that there are these overwhelming regulatory barriers and many of which cost a lot of money which are ultimately added to the cost of that home which will preclude families across America from homeownership.

I thank you for your part in that workforce housing initiative, and that has certainly been our focal point for several years to recognize that our local heroes in each of our communities across America for a number of reasons are locked out of ownership of that first home.

I thank you for bringing that question up.

Ms. MUSGRAVE. Well, it is interesting. When we talk about affordable housing, very often we do not hear why cement is so expensive or wood is so expensive or what kind of applications are wrongly applied.

If we could start sorting out those things I think we could have some market solutions that would really help those young couples or those single moms get into their homes and realize the American dream.

Thank you.

Mr. PRESSLY. So many regulatory barriers. You are exceptionally attentive at that forum because there is the Canadian lumber issue, the tariff on that Canadian lumber issue. There is the importing of cement from Mexico, those exceptional duties there.

Our young people and folks who are not particularly affluent across America are paying that price, literally paying an extra tax on that home because of some of those trade issues.

I thank you for your sensitivity to that.

Ms. MUSGRAVE. You are welcome.

Mr. Lipinski, do you have questions?

Mr. LIPINSKI. Yes. Thank you, Madam Chairman.

I very much appreciated the testimony of all four of you today. I had a couple questions. I will start with Dr. McClelland. You had mentioned your support of eliminating the estate tax. Last week we voted in the House to completely eliminate it.

I am not certain what is going to happen in the Senate, but if we did change the estate tax to have an exemption for \$3.5 million per individual, \$7 million per couple, would that be enough to help your members, small business owners in your association?

Mr. MCCLELLAND. Thank you for the question. I think that you are referring to the Pomeroy substitute—

Mr. LIPINSKI. Yes.

Mr. McCLELLAND. —in a sense there. We did not support the Pomeroy substitute. We have been supportive of H.R. 8.

Frankly, I will tell you that this issue has been one that until the Pomeroy substitute there really has not been very much room in the middle on. I mean, it has either been one side or the other on this, and we decided that a complete and full elimination of the estate tax was the side that we would take at that time.

I agree there is going to be some interesting debate in the Senate. We have no idea what is going to happen, so I cannot tell you where this is going to end up, but right now our position is to continue to support full elimination. We really have not come up with a number.

Mr. LIPINSKI. Do you have any idea how much? I am just trying to get a sense of is that enough of an exemption to take out from most of your small business owners the burden of the estate tax?

Mr. McCLELLAND. Because of the heavy capital that is involved in especially the construction end of the business —you know, some of these machines cost \$100,000 right off the top, and when you have several hundred of those in your fleet or 1,000 in your fleet, and that is not untypical.

I believe that the amount of money that was in the Pomeroy substitute would probably not cover as many of our members as we would like to cover.

Mr. LIPINSKI. Mr. Dean, I am really interested with your recommendations and was interested in your answers to the questions by Chairman Musgrave.

I just want to say I am a former college professor, but I do think that this is something, you know, even though on the one hand I was always getting more and more kids to college, I think that it is important that we do provide what we can and help people and help kids to understand that there are these types of other jobs which are very important and can be good careers for them.

What do you think it has been about the SWEA that has prevented it from being passed and becoming law, and is there something that we could do differently that you think would help?

Mr. DEAN. Well, first let me point out that I worked my way through college doing heating and air conditioning. I personally worked my way through college doing heating and air conditioning so I have seen both sides of the fence, and I would not give up either one.

That said, the SWEA, I think the biggest objections that I had a sense of when it was processing through the effort was that they felt the cost of it, that the return would not be adequate for the amount that it was going to cost the government. I felt that maybe I do not understand that.

I think that the Act would greatly help us because we have so many of our technicians that are in a stage that need extensive training particularly in our field. The air conditioning and heating is one of the most sophisticated trades when it comes to—nothing against plumbers or electricians, but you have to know all of those

things to be able to work on today's modern technological advances in gas heating equipment and air conditioning equipment, printed circuit boards, the physics of refrigeration.

It is very complicated and so there is a tremendous investment that small business owners have in getting technicians and retaining them through that training process. That is our challenge.

Mr. LIPINSKI. Okay. Very quickly, Mr. Wilson, how would H.R. 230 add to what SBDCs do right now?

Mr. WILSON. Well, our original job was simply to provide overall management and technical assistance in terms of financial management, human resources, et cetera, et cetera. It was in 1977 that Congress added the responsibility of providing small businesses with regulatory compliance assistance.

We hear a lot about unfunded mandates. Our network basically feels that was an unfunded mandate. It was a new responsibility for us, one we were perfectly willing to assume, but we got no more resources to do it.

To provide that type of expertise in the network takes some fairly sophisticated people. We can do it well. Pennsylvania has done it on a modest scale, Idaho, some others. Most of our people will try to work with some of the other regulatory compliance assistance, the 504 program, EPA folks.

It is an interesting situation. The State of Pennsylvania and the State of Idaho have decided that the SBDCs can actually run the EPA 504 program better than the state governments and have subcontracted the program out to us.

We can do the job, but we cannot do it if we are laying off counselors right and left. How can we hire new regulatory compliance counselors if we are laying off our regular management and finance counselors? That is what is going on.

You know, we are seeing centers closed all over the country. Mississippi has closed probably five centers in the last two years. New Hampshire has closed two centers in the last year. That is simply because with no more funding with the difficult situations that state budgets and federal budgets, but OMB by its own submission to the Congress last year acknowledged that the program returns \$2 to the Treasury for every \$1 spent.

If a small businessman or you or I could find an investment like that, we would be putting a lot of money in it, and yet we keep reducing the money or level funding. We can find the people who can do regulatory compliance assistance and do it very well as the folks in the state government in Pennsylvania and Idaho and others have acknowledged. We do it very, very well.

Let me give you a classic example. I find that most small business people want to comply with regulations. Most small business people, they have family working in the business. They do not want it to be unsafe. I mean, you would not want your child or your cousin or your nephew or brother or sister working in a business that was unsafe.

They want to comply with EPA and OSHA regulations. They simply do not know how. There are all kinds of people who will

come along and tell them how from for-profit organizations, but that is not the most cost effective way to the business.

Classic example. When I was with the National Tire Dealers and Retreaders, one of the issues is what do you do with waste oil? Everybody came around and told them you have to buy all this very expensive equipment, oil filter crushers, et cetera, et cetera, et cetera.

However, the regs allow you to use gravity drains and simply drain the oil filter. Okay. If a small business person does not understand that that is an option, especially a smaller business, he will spend money that he does not need to spend because he is not an expert, okay? He is just trying to run his business and run it right.

He is willing to comply, but he wants to keep the compliance cost as reasonable as possible. SBDC counselors can help advise him how to do that and incorporate it in their overall business plan.

You start a restaurant. You have people who want to go out and start a restaurant who are not even aware of the ADA regulations. If they read them on the web for the next two months they still would not understand them. If they are going to start that business and run it properly without getting fined, they have to know what to do, how to do it in the most cost effective way.

We can provide that training and that knowledge. They come to us all the time, but we simply lack the capacity to do it properly.

Mr. LIPINSKI. Thank you, Mr. Wilson. You have certainly sold me on SBDCs, so we will have to see what we can do about helping them so they can keep helping small business.

Mr. WILSON. Thank you, sir.

Ms. MUSGRAVE. Mr. Westmoreland, do you have questions?

Mr. WESTMORELAND. Oh, you bet. Mr. Pressly, you talked about the notice of intent. We have to file them in our business. I am in the same business you are. They go to somewhere. We do not know where they go because I do not think anybody ever looks at them, to be honest with you, until there comes a time where there is a problem.

The same thing with the reports, the NPDES reports that you send in. There are stacks somewhere, and they are really held there for litigation purposes I truly believe. I do not think anybody ever even looks at them.

When we are putting up these environmental protection laws and yet the cities and counties make us pave our streets wider, they put in more impervious surface down, they require curb and gutters so you run all the water to one area, and I do a lot of developing in rural Georgia. Even on a three acre tract they want you to have curb and gutter rather than an open ditch where the water would get back into the ground.

Until I think that they make cities and counties start looking at some of their regulations that really calls more of an impact on this stormwater runoff and other things, and they need to leave us alone because I think we would more than gladly help them in that

problem. I think we could address that in the development industry itself.

Do you know how the EPA has determined the effect of what stormwater really has on our water quality?

Mr. PRESSLY. I agree with you, Mr. Westmoreland. It would seem in the eminent brilliance of our local administrators, of our state administrators and certainly our federal government, you would think there would be some congruence in all that brilliance to tell us where we need to be, what we need to do to solve the problems.

We have the same problem with EPA. Anecdotally, I present to you some of the costs that our members have borne in terms of this permitting process and in terms of our fines as well. We have gone to EPA under the Freedom of Information Act to ask for their information because we want to be at the same table. We want to solve those problems, but we want to have the best information we can.

We have been denied that information from the EPA. We have appealed that decision. We are waiting on that appeal, but we are here to say we want to do the right thing, and we want to be effective. As these gentlemen said, we want to be custodians of our water. We want to be great custodians of our air for our customers and our children and those who work with us, but we feel like so many times we are frustrated every step of the way.

We are the first to say we want to do our part to eliminate those barriers and eliminate those impediments and achieve this common goal, which I think we all have.

Mr. WESTMORELAND. Absolutely. Mr. Dean, you talked about the education part of it. You know, they are trying to cut the Perkins funding. The President would like to put that money into I think the High School No Child Left Behind.

I was at a high school in Upson County, and I was in a class, a geometry class. They were trying to tell or explain to the students how to get the hypotenuse of a right triangle. I said well, do you know what you are doing is you are squaring up a house? I mean, that is exactly what you are doing.

If you take somebody out in the field that may not comprehend what you are trying to teach them in a geometry class and you take them out there with a tape measure and you show them how to square something up, it becomes practical to them and they understand it.

I think that that is what a lot of people do not understand. I know in the heating and air conditioning business you take somebody in a classroom and try to get them to figure up how many cubic feet per minute air moves through a round pipe or can get through a square duct or whatever.

They would think what in the world do I need to know this for, whereas if you take them and put them into that practical aspect they not only learn some geometry or trigonometry, but they learn chemistry. They understand that galvanized pipe and copper have a reaction to each other, so they not only learn geometry or trig or math, but they learn chemistry and other things.

It is just as important that we get those people who are not going to go on to get a four year degree, and some of your technicians

I am sure will have as much classroom education as some of those, but they get a lot of academics in those practical experiences that we offer in our industry in the training that we are trying to do for these young people. It is like you said. \$50,000 is not a bad place to start when you get into the industry.

What could we do to make people better understand the fact that everybody is not going to go to college and that what is happening is hurting us in our industry as far as having a work supply which kind of gets into the immigration situation that we hear so much about right now?

Mr. DEAN. Well, as I said earlier, our efforts, we are working with manufacturers also now because they have more money than we do to get out to the public in general about how critical our trade, our industry is.

This House would not be in session if the air conditioning was not working. The hospitals in this area would close down. I mean, we are essential, yet people have a very hard time understanding that this can be a very great industry to work in, and they need to start learning it early, even in middle school, that this is an essential, vital industry.

Two of my daughters are in college now, but they are very appreciative of the fact that their father works in the heating and air conditioning trade because they would not have been able to afford it without it.

Mr. WESTMORELAND. Absolutely. Do I have time for one other question?

Ms. MUSGRAVE. Yes, Mr. Westmoreland.

Mr. WESTMORELAND. Dr. McClelland, you mentioned, and I have not figured out yet why we want to continue to tax the businessman that has created jobs. He has provided for his family. He gets up early every morning. He works hard. As I sit on the Floor of the House, some people look at him as just a gift that keeps on giving. You know, even after he is dead they want to tax him.

Other than the inheritance tax, have you had any complaints from your members about the alternative minimum tax and how that is affecting them?

Mr. MCCLELLAND. Well, that is a great question because that is mainly an issue for individual income, as opposed to the business tax, but I can tell you that I hear and have heard more about that recently in terms of any other federal tax issue than anything else.

I mean, we will talk about Section 179 or the estate tax as policies that the Association is supporting on behalf of our members, but I have a lot of members who come and tell me that they got it this year or it hit them last year and that it hit them again harder this year.

I think that the fact is that that tax was not indexed for inflation and now what was considered wealthy a number of years ago is basically middle class now. We have an awful lot of people that are



getting hit by that tax so I certainly do hear a lot about that from my business people.

Ms. MUSGRAVE. Thank you, Mr. Westmoreland.  
Mr. Lipinski, any more questions or comments?

Mr. LIPINSKI. I just want to thank all the witnesses for their written and their testimony here today and the answers to the questions.

I look forward to working also on this Subcommittee, on the Committee, to work on getting rid of some of these barriers. We all know how important small businesses are. We need to make everyone else in this country aware. I think it is not always the case that people are aware of how important small businesses are to our economy, in creating jobs and to our communities.

I look forward to working here in Congress to do what we can to get rid of some of these burdens that are faced by small business owners. I thank everyone for your comments here today.

Ms. MUSGRAVE. Thank you.

I would just like to say that in regard to Section 179 and the expensing limits I have just introduced a bill—you know they are set to expire in 2007—that would extend those limits to 2010, moving in the right direction. We will be working on that.

I think that you have heard from Members on both sides of the aisle that we really want to be supportive of small business. My husband and I have had a small business for many years, and I know you work until the work gets done. You get up early. The buck always stops here.

I think that has been an incredible experience for our four children to see, as Mr. Dean alluded to the fact that his college daughters are aware of where the tuition dollars come from.

I just applaud the men and women around America that do what needs to be done, whether it is unclogging our pipes or fixing the tires on our car or working on the air conditioning and heating. We really must as Americans get over this stigma that if you are in the workforce without a lot of letters behind your name you are not doing something significant because this country could not go on without these individuals doing this work.

We want to be very respectful of these occupations. We want to do things in this country that will give a better life to our children and our grandchildren and look at regulations that do not make sense, that are not applied properly.

We have a great deal of concern for our environment and those things that really benefit all of us, but we need to stop doing things that do not make sense that cost people a lot of money.

Mr. Westmoreland, Mr. Small Business Owner, do you have any other comments you would like to make?

Mr. WESTMORELAND. Yes, ma'am. I would like to make just a couple more.

I want to thank you all for coming. I know that some of you gave recommendations of what we could do to actually put something

into law in the statute that would really help. You know, it is amazing to me that we have so many regulations.

You mentioned the Federal Register, and how many pages that is. I wish most Americans would look at it. I think they would understand that we are doing a lot of things that we do not need to be doing.

Mr. Pressly, you mentioned some of the endangered species. If you ever see one of these on your job, get rid of it. It is the shiny-rayed pocketbook mussel. In Georgia, in Fayette County, Georgia, we are trying to build a water reservoir that would furnish the people of that county their water deeds for the next 50 years with disrespect to growth.

Four years ago, one of these was found four and a half miles below the dam site. One of them. The Fish and Wildlife asked if they would do another study. They did one two years ago. They found one mussel. This time it was six miles below the dam.

They have purchased about \$7 million of mitigation property, and they are fixing to have to close on the deal. They want them to do another study. These studies cost \$250,000 each.

I mean, you know, we have to put some common sense into some of this stuff. I have noticed the statistics you had here about the number of acres that are set aside for some of these things. I am all for saving endangered species, but some of this has just gone entirely, entirely too far.

I really want to know if you all have any ideas of what we can do to bring some common sense into some of these things and what we can also do to make the public realize exactly what is going on because everybody wants clean water. Everybody wants clean air, but how clean is clean? To what extent do you take it, and at what cost to our economy do you go with it?

Mr. PRESSLY. We have a number of aspects, and I would like to put those in your hand if I may, a number of written aspects just to answer that very question so you can have those for the record.

Many of us feel the same way. Just where is that balance? How have we lost ourselves? How have our goals become obscured by the nefarious species you have in your hand? At what cost?

We think about stormwater. We as home builders certainly want to manage that, and we know that we contain every bit of it. We could have done the same thing to our Pentagon. We could have designed our World Trade towers so they would never come down, but at what cost? At what opportunity?

In western North Carolina we never would have expected to have two hurricanes back to back last summer come through to cause stormwater runoff problems. We never would have done that. Each one of those construction sites could have been designed, but at what cost?

What cost, Mr. Westmoreland, and what is our goal? What is our common goal we have? To answer you specifically I have a whole list of things, but rather than taking your time now I would like to put them in your hand.

Thank you, sir.

Mr. WILSON. Mr. Westmoreland, you asked what easy things can be done. We have an interesting situation with the SBA. SBA basically evaluates an SBDC in terms of its quality-based, as we laugh and say, body count.

All they want, because their district directors get bonuses at the end of the year if they achieve goals. Well, for SBDCs and basically the management and technical assistance programs goals are just how many people did you run through the turnstile.

That would be like saying well, we can tell whether or not a school is good by how many kids who are in it or how many kids are in the classroom. They would rather us see a hundred people for an hour than 20 small business owners for five hours, and yet all of our research for a quarter of a century, we understand we are not going to have significant economic impact and job creation with that business if we just see them an hour in a cloud of dust.

We have appealed to them for six or seven years to come up with some other way, economic impact, because you see it is a match program. Your State of Georgia puts dollars into that program, okay? Mr. Lipinski, in fact it is run out of the state, Mark Petrolini in Illinois. It is run out of the state government. They put state dollars into the program.

What do those matching partners want? They want economic impact. If we are forced as we saw in this last year where the hours per client went down as we try to achieve that ever higher number, we are not doing the small business person any favor.

We are reducing we believe job creation and economic impact, which will lead our partners to say we may not want to invest in this. If they do not invest, we cannot get the federal dollars because without the match we cannot get the federal dollars.

The federal review recently talked about the SBA disaster loan program and how they evaluate their success by the number of people who come in and apply; not how many people get it or how many businesses are saved. This is the type of bean counting that occurs in most bureaucracies. We just happen to work with SBA.

The fact is they refuse to say the measurement of a management and training assistance program, and you can talk to the women's business centers. You can talk to SCORE. We all feel the same way; that we should be measured not on body count, but on economic impact. The Agency and both Administrations, Republican and Democrat, continues right on. We want body count.

Now, just a simple word or letter saying, you know, this program is designed to create jobs and create economic impact, we hope you will evaluate these programs based on that, would probably make all of these programs, the Women's Business Center, SCORE, et cetera, minority business agency policy much more effective and serve the client much better.

Ms. MUSGRAVE. Thank you, Mr. Westmoreland.

Mr. Lipinski, did that elicit any more need for comment from you?

Mr. LIPINSKI. No, Madam Chairman.

Ms. MUSGRAVE. Okay. Thank you very much, fellow Members, and thank you, gentlemen, for your excellent testimony today.

This hearing is adjourned.

[Whereupon, at 11:20 a.m. the Subcommittee was adjourned.]

**Subcommittee on Workforce, Empowerment, & Government Programs  
Hearing-- Removing Obstacles to Job Creation: How Can the Federal  
Government Help Small Businesses Revitalize the Economy?  
April 21, 2005**

- Good morning. Thank you all for being here today as we examine potential roadblocks to success for America's small business.
- Specifically, we are going to be looking at problems (either generated or neglected by the federal government) that prohibit job growth and prosperity in America's small business community along with potential solutions to these problems.
- I look forward to working with all of you, especially our distinguished Ranking Member from the state of Illinois, Mr. Lipinski, as we address these issues together.  

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- As I am sure most of you are aware, small businesses are the driving force behind our economy. They represent 99 percent of all employers; more than half of all U.S. employees work for small firms; and, they generate between 60 and 80 percent of all new jobs in America.
- Small businesses are the main component in our economic engine and we, as your elected officials, must do all we can to foster, not hinder, their growth.
- Running a small business is not easy, and what we must do is relieve some of the burden that comes directly from Washington, DC. Unfortunately, Congress and the federal government have been fond of passing new laws and imposing mandates and regulations on business.
- Congress has been working in recent years to diminish that burden--legislation such as the Paperwork Reduction Act, the Small Business Paperwork Relief Act, and more recently the Jobs and Growth Tax Relief Reconciliation Act of 2003.
- However, even with the passage of these bills, federal regulatory, tax, and compliance burdens continue to be cited by many owners as the most significant problems facing their businesses.  

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- For example, according to a report recently published by the SBA's Office of Advocacy, Americans spend \$843 billion complying with countless federal regulations.

- The average cost per employee of regulations to small businesses is \$6,975, which is 60% higher than the cost to large businesses. To put it another way, Americans spent 8.22 billion hours to comply with federal paperwork requirement.
- Small business tax forms alone account for 500 million hours in compliance time each year.
- This is time that should be spent growing a business or time spent with family.  
=====
- It's not just the regulatory burdens that hurt small businesses. The health care marketplace is especially difficult for small firms.
- The cost of health insurance has become prohibitive for many of America's small businesses and their employees.
- Of the 45 million uninsured Americans, 60 percent work for small employers who can't afford to purchase health insurance for themselves or their employees.
- Congress, is exploring mechanisms, such as Association Health Plans, expanding the use of Health Savings Accounts and Flexible Spending Accounts, and increasing tax credits specifically for the purchase of health insurance. All of which will help small businesses use market forces to make healthcare more affordable.  
=====
- The tax code is yet another government invention particularly onerous to small businesses.
- Despite the significant tax relief Congress and President Bush have provided to small businesses, taxes are still too high, and the tax code is ridiculously complex.
- A recent study conducted for the SBA's Office of Advocacy found that Tax compliance cost \$1200 per employee for the very small firms versus \$562 for large firms.
- That is a significant handicap for a small business as every extra minute spent deciphering the tax code is one less minute that owner can spend growing his or her business, providing new jobs, and revitalizing our economy.
- We must continue to strive for lower levels of taxation along with simplicity and permanency in our tax code.

- I am very eager to hear the testimony today, and I sincerely hope we can further help further the debate for creative ways the federal government can assist small businesses. I would now like to yield to the Subcommittee's Ranking Member, Mr. Lipinski, for any opening statement he would like to make.

**Testimony of the American Rental Association  
Before the House of Representatives' Committee on Small Business  
Subcommittee on Workforce, Empowerment,  
and Government Programs  
April 21, 2005  
John W. McClelland Ph.D.,  
Vice President, Government Affairs**

Good morning Chairwoman Musgrave. I want to thank you and the Members the Subcommittee on Workforce, Empowerment, and Government Programs for the opportunity to come before today to discuss policies that inhibit the creation of jobs in our industry. I will summarize my testimony, but ask that the full extent of my comments be included in the record. Before I begin, I would like to provide you with some background on the rental industry – who we are, what we do, and the kind of businesses that are part of our industry. I am including a one-page summary of our industry with my statement.

The American Rental Association (ARA) began in 1955 with 22 Midwestern rental owners in Moline, IL, where our headquarters remain today. In 2005 our membership includes more than 7,500 rental businesses and 1,100 manufacturers and suppliers. The rental industry generates almost \$24 billion in annual revenue. I have included a one-page summary on the economic contributions of the rental industry to the U.S. economy with my written testimony. ARA represents the entire equipment rental industry, and that includes many small, family-owned businesses as well as large, publicly-traded companies. Our largest member is United Rentals with \$1.4 billion in market capitalization and \$3 billion plus in annual revenue.

ARA members rent equipment, tools, and party supplies. These goods are provided through a rent-to-rent contract. This contract is different from a lease or a rent-to-own contract because our members always maintain ownership of the goods and accept the responsibility of that ownership. For example, when you rent a floor sander from an ARA member, you expect it to work, and if it does not you want another one right away or your money back! Essentially, the rental business is a service business.

The rental business is also capital intensive. Many of the large machines that are rented to the construction industry cost in excess of \$100,000. Smaller machines, as well as tools and tents, often cost between \$10,000 and \$30,000 per unit. The total rental inventory in 2004 was valued at \$34.1 billion, and we believe the annual replacement cost for equipment in the rental industry ranges between \$3.4 billion and \$6 billion. Recent changes in tax policy such as bonus depreciation and the expansion of the section 179 expensing provision have helped the rental industry, and especially the small business members of ARA, to increase their investment in rental inventory.

While ARA members of all sizes face issues that affect the performance of their businesses, I want to spend the remainder of my time discussing issues that mostly affect the performance of ARA's small business members.



### *Health Care*

ARA is a member of the *Coalition for Access and Choice Through Association Health Plans*, a group of nearly 150 associations that want the opportunity to provide quality health care to our members and our members' employees through our associations. ARA appreciates the work of Members of the House Small Business Committee from both sides of the aisle in support of H.R. 525, and we hope that support will continue.

Let me illustrate the issue from our Association's perspective. Rental is a service industry. ARA has both small and large members who often compete directly against one another. ARA believes competition makes our industry stronger. However, it is difficult to see the fairness when our large members, who are exempt from the requirements of the Employee Retirement Income Security Act (ERISA), can offer company plans to their employees while small, independent members of ARA have difficulty purchasing health coverage for their employees. Employees are attracted by pay and benefits, and health insurance is a major benefit. In a competitive labor market, it is difficult for our independent rental businesses to compete with the large national companies because they cannot match the health care benefit even though they may be spending as much per employee. Therefore, independent rental businesses may not be hiring the best employees available because they are at a disadvantage in the labor market that is created by federal law.

Let me be very clear on one point. ARA does not suggest, nor would we support any erosion of our members' current rights under ERISA. We believe the ARA members offering ERISA-exempt health care are providing a high-quality product, and we support their right to continue this practice. We are simply asking that ARA have the same opportunity to offer a similar plan to our members who are rapidly losing the ability to find any health care program for their businesses.

### *Estate Taxes*

ARA supports the elimination of the estate tax. The effects of the effects of the estate tax policy on small businesses are especially egregious. When the shareholder of a large corporation dies, the heirs of that taxpayer's estate must deal with the consequences of the estate tax. However, when the owner of a small business dies, the consequences may also be felt by the employees of that business as well as the community where that business is located.

In the case of a publicly-traded company, the capital stock of the company is not affected by the death of a shareholder. However, when the owner of an independent rental business dies, the heirs may be forced to liquidate all or part of the business's capital stock to pay the estate taxes. Death is the taxable event. To avoid the need for selling the business to pay the taxes, businesses that can afford it will resort to estate planning and insurance. This is a transaction cost paid by independent businesses that could be used to hire new workers or invest in new equipment. Thus, instead of making direct

investments in labor and capital that create economic activity and growth, independent rental businesses invest in insurance and estate planning for a taxable event that will happen on an unknown date. ARA does not believe death should be a taxable event. Small business must be relieved from the burden of either undertaking costly planning to mitigate the impact of the estate tax on the business, or putting their business and future generations at risk.

#### *Liability*

Rental businesses accept the risks of ownership of the products they rent even though those products are not in their custody. One issue that rental businesses continue to be concerned about is the liability they are exposed to when they rent products that cause injuries that are not their fault. Specifically, ARA supports a \$250,000 cap on non-economic damages except in very limited circumstances. We would also support limitations on so-called Joint and Several Liability. Finally, ARA supports federal action so that renters, sellers, and lessors other than manufacturers may be held liable only if they are directly at fault for a harm. For example, if the harm were caused because the rental company intentionally removed essential safety equipment from a piece of machinery and an injury resulted, the rental business's actions would be a direct cause of the harm and subject to a liability action.

That concludes my remarks Madam Chairwoman. I would be happy to answer any questions you or other members of the Subcommittee may have at this time.



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**TESTIMONY ON REMOVING OBSTACLES TO JOB CREATION: HOW CAN  
THE FEDERAL GOVERNMENT HELP SMALL BUSINESSES REVITALIZE  
THE ECONOMY?**

**BEFORE THE SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND  
GOVERNMENT PROGRAMS**

**THE HOUSE COMMITTEE ON SMALL BUSINESS**

**SUBMITTED BY  
RICHARD DEAN, PRINCIPAL  
ENVIRONMENTAL SYSTEMS ASSOCIATES  
COLUMBIA, MARYLAND**

**APRIL 21, 2005**

Chairman Musgrave, Ranking Member Lipinski and members of the Subcommittee on Workforce, Empowerment and Government Programs of the House Committee on Small Business, on behalf of the Air Conditioning Contractors of America (ACCA), thank you for providing me the opportunity to testify today on this very critical issue to small business. ACCA is the national non-profit trade association that represents the technical, educational and policy interests of the men and women who design, install, and maintain indoor environmental systems. We have over 50 federated chapters with nearly 5,000 local, state, and national members. Most of our contractor members are family-owned small businesses and many of these small businesses are in their second and third generation of family ownership.

In addition to being a member of ACCA, I am a principal in Environmental Systems Associates, based in Columbia, Maryland and have 21 full-time employees working for the company. We provide residential heating and air conditioning service to customers throughout Howard County, Maryland and the Baltimore/ Washington, DC corridor, since 1972. In addition to running my business, I am serving a one-year term as Senior Vice Chairman on ACCA's Board of Directors. Next March I will become the Chairman of ACCA and will represent the entire industry.

In a given day, I face many complex issues and challenges in running my business that stem from the federal government. These issues can range from



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paying my company's taxes, trying to provide affordable health for my employees, complying with the Occupational Safety and Health Administration (OSHA) regulations and complying with the Environmental Protection Agency (EPA) regulations on refrigerants there is very little that takes place that does not involve the federal government. Some days I feel like all I do is to comply with the rules and regulations required by the federal government and not focus on my business, my customers or my competition. In many ways I feel like the federal government has become my "silent business partner" and is an active component of how my company makes decisions. Since I have this "silent partner" I, along with many members of ACCA, feel that we need to create opportunities to work with this silent partner to better our industry.

Although our industry faces many challenges, one of the major issues, that is almost becoming a crisis, is the lack of qualified air conditioning and heating technicians to service America's homes and businesses. Unlike a variety of industries across the country, the HVACR industry continues to struggle to attract young men and women into our industry. This has happened for several reasons and the need to fix this trend is extremely important, both for our industry and for American consumers. If we are not able to address this problem it is the American consumer that will ultimately pay the price because there will not be enough technicians available to fix air conditioners in the summer and furnaces in the winter.

One important reason for this labor shortage is the tendency by some educators and guidance counselors in the public school systems to steer high school students away from vocational education and towards four year colleges. Our industry feels very strongly on the importance of education but we remain concerned that vocational education, which would train men and women to become HVACR technicians, is perceived as a second class career choice compared with attending a four year college. This couldn't be farther from the truth! In order to become an air conditioning journeyman, which is the first step in becoming a qualified technician that can perform service calls for my company, an individual must complete 144 hours of classroom instruction per year and 2,000 hours of on-the-job training in the field every year for a minimum of three years. One example of this training is obtaining EPA Section 608 refrigeration recovery training which trains journeyman on the proper handling of ozone-depleting refrigerants used in modern air conditioning units.

Training also continues throughout a technician's career in order to become knowledgeable on the complex air conditioning and heating systems that are constantly being developed. Of particular interest is the North American



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Technician Excellence, or NATE, certification program that provides additional training and certification to technicians in their careers. The NATE program is an independent, non-profit national organization supported by industry leaders committed to improving the HVACR industry. Based on these examples I would argue that a properly trained air conditioning technician experiences the same rigorous training as college students working towards a four year degree.

In July, 2004 ACCA, along with other organizations in the HVACR industry, wrote to President Bush asking him to form a new dialogue with our industry to address this situation. I am going to submit a copy of that letter with my written testimony. One of the most important points in the letter was the fact that our industry has more jobs available than employees to fill these jobs. It is imperative that the federal government, through the Departments of Education and Labor, work with our industry to remove the negative stigma that training to be an HVACR technician is somehow not good enough. On the average, a well-trained technician in my company can earn as much as \$40,000 - \$50,000 upon entering the industry. In addition, nearly 40% of the businesses in our industry are run by former technicians. With hard work and dedication, becoming an air conditioning technician in your early twenties can be an avenue to owning your own small business and help to grow the economy and create more jobs. Ultimately we feel it is imperative for the Departments of Education and Labor to work together to educate school guidance counselors on the benefits of joining our industry and making it a lifelong career. In many cases it seems to me that some students could flourish in a vocational education program as opposed to a traditional four year program where they might become frustrated with the curriculum. Our industry offers additional choices for young Americans and we urge the federal government to work with educators to explore the career potential of the heating and air conditioning industry.

Another recommendation that our industry feels would address our labor shortage would be to develop a program to train displaced manufacturing workers to become air conditioning and heating technicians. In many cases, the recent closure of manufacturing facilities has resulted in tremendous job loss with repercussions being felt throughout a community. Also, in most cases these jobs are lost forever as the manufacturing facility is moved off shore. These skilled workers are just the type of workers our industry desperately needs and our industry would be very attractive to displaced manufacturing workers because our jobs cannot be moved off shore. This would provide stability for these workers and their families that they do not have today. The problem is creating a bridge to get these workers trained. This is an opportunity for Congress and the administration to work together to create programs to fund training for displaced



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manufacturing workers. The program could be similar to the Carl D. Perkins Vocational and Technical Education program that funds vocational education for young students, yet apply to individuals forced into a career change through the closure of manufacturing facilities. Ultimately this would be a win-win scenario for the displaced worker, heating and air conditioning contractors and, ultimately, the consumer.

Congress has attempted to address this issue in the past. The Skilled Workforce Enhancement Act (SWEA) was sponsored in past Congresses, first by former Small Business Committee Chairman Jim Talent and then by Representative Mark Foley. The SWEA legislation would create a tax credit of \$15,000 per employee per year for up to four years. The legislation was specifically designed for a small business employer because it limited the scope of the legislation to any employer who employs 250 or fewer people a year. This legislation would have been helpful to members of our industry because it would have allowed our small business contractors to recoup the high cost of training technicians. Unfortunately the bill was never acted on.

As I stated at the start of my testimony, most of ACCA's member companies are family-owned businesses. Your support for these measures would demonstrate recognition of the unique challenges that our small business contractors face every day in running our businesses. By helping to address these issues, Congress can go a long way in assisting job growth while also providing a real benefit to American consumers.

Thank you for your attention and the opportunity to present our views before your subcommittee.

Council for  
Improving Life  
and the  
Environment

Associations Representing Heating,  
Ventilation, Air Conditioning,  
Refrigeration and Plumbing



**"When a Job Calls, No One Answers"**  
*New York Times, May 9, 2004*

**"Construction, Service Sectors Lead Hiring Wave"**  
*Chicago Tribune, April 3, 2004*

July 23, 2004

The Honorable George W. Bush  
President  
United States of America  
1600 Pennsylvania Ave.  
Washington, DC 20500

Dear Mr. President:

The above headlines underscore a growing concern that we believe threatens our nation's economic vitality and long-term stability. It is a dichotomy of events. On one hand there is persistent unemployment as individuals scramble to find jobs. On the other hand, many industries have job openings and are searching for skilled individuals to fill these positions.

But something can be done.

The below listed organizations represent the broad spectrum of the nation's heating, ventilation, air-conditioning and refrigeration industry. From major equipment manufacturers to distributors to contractors to service technicians we share a common belief. **We need a change in focus in our nation's educational mission, priorities and funding.** We have the jobs available to employ thousands of individuals, and if you add our partners in other manufacturing and service industries the available job picture could easily reach in the millions.

We share your vision of providing quality education and job opportunities to every American. Unfortunately, there are impediments in place that make achieving that vision extremely difficult. For the past two decades we have seen an erosion of our nation's vocational education system. Attention and resources have been given to the two and four-year college degree programs while vocational education has been delegated to the back-burner. To make matters worse, our nation's educators and counselors have put a stigma on vocational education by classifying such instruction as something less than conventional.


It is time to reverse this trend and remove the perceived stigma associated with vocational education. Our nation's economic strength and our personal quality of life are not built solely on the number of lawyers, doctors and academicians our educational institutions can produce. It also largely depends on the number of skilled professionals that have been trained to manufacture products in our factories in addition to those that can construct, service and repair basic household infrastructure systems such as plumbing, electrical and heating/air-conditioning. **In fact, 60% of tomorrow's jobs start with today's career and technical education.**

4100 North Fairfax Drive, Suite 200, Arlington, VA 22203  
Phone: 703-524-8800, Fax: 703-528-3816

Today's job market and global economy demands that employees are well trained. The basic equipment tools of yesterday will not suffice in today's job market. Knowledge in computer technology, diagnostic sciences, and electronics is a requirement in almost all occupations. The educational system is failing the business and industrial community by not providing (or encouraging) educational opportunities in the multitude of skilled professional careers throughout industry. **Many industries, HVACR among them, have a pent-up demand for trained individuals to place on its employment roles. We want to be, and frankly can be, a solution to the nation's unemployment situation.**

On behalf of the below organizations and the thousands of individuals and businesses they represent, we respectfully request that you and your administration support the development of measures that will allow us to provide meaningful job opportunities to thousands of unemployed Americans. We have requested an appointment with the Secretary of Education and the Secretary of Labor to discuss our concerns and look forward to continuing this dialogue with your administration.

Sincerely,



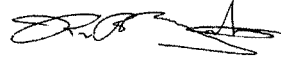
William G. Sutton  
President  
Air Conditioning & Refrigeration Institute



M. Kent Anderson  
President  
International Institute of Ammonia  
Refrigeration



Paul T. Stalknecht  
President & CEO  
Air Conditioning Contractors of America



Rex P. Boynton  
President  
North American Technician Excellence



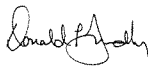
Barbara Morrison  
Executive Director  
Air Movement & Control Association



D.L. "Ike" Casey  
Executive Vice President & CEO  
Plumbing Heating and Cooling Contractors  
Association



Evan Gaddis  
President  
Gas Appliance Manufacturer Association



Don Frendberg  
Executive Vice President & COO  
Heating, Air-conditioning & Refrigeration  
Distributors International



**Testimony  
Before the Committee on Small Business  
Subcommittee on Workforce, Empowerment and Government Programs**

**By  
David Pressly, 2005 First Vice President  
National Association of Home Builders  
April 21, 2005**

Good afternoon Chairwoman Musgrave, my name is David Pressly. I am the president of Pressly Development Company, Inc. of Statesville, North Carolina and the 2005 First Vice President of the 220,000-member National Association of Home Builders.

The home building industry is dominated by small businesses, so regulations that have a disproportionate impact on small businesses have a significant impact on our industry. As evidence of the dominance of small firms, about four-in-five of our member firms build fewer than 25 homes a year. Because the home building industry is made up of many small firms, all competing for the same home buyers, the industry is very competitive. In addition to giving the home buyer the best buy for their dollar, the intense competition means that most builders make a decent profit for their efforts but not a large profit. Good competition also means that builders cannot absorb extra costs that result from inefficient regulations. Regulations that raise the cost of construction, slow the process or add unnecessary requirements ultimately raise the cost of housing to the home buyer or apartment renter. 240,000 households fail to qualify for a mortgage for every \$1,000 increase in the median home price. That number jumps to \$725,000 for a \$3,000 increase in median home price. Not only are people being pushed out of the housing market, but that also means less work for home builders and fewer jobs for the people we employ.

I would like to provide the Subcommittee with examples of six regulations that have negative impacts on the home builder, particularly the small home builder. The examples that I would like to mention concern the following regulations:

- FHA Mortgage Insurance for Small Multifamily Properties
- Section 8 Housing Choice Vouchers and Seniors Assisted Living Facilities
- Management and Oversight for RHS Multifamily Properties
- Clean Water Act NPDES Storm Water Permitting Program
- Clean Water Act Section 404 Wetlands Permitting Program
- Endangered Species Act Critical Habitat Designations

#### **FHA Mortgage Insurance for Small Multifamily Properties**

##### **Background**

Department of Housing and Urban Development (HUD) Federal Housing Administration (FHA) insurance plays a key role in the availability of financing for affordable rental housing for working families, but currently it is not a viable system for funding small (5-50 unit) multifamily rental properties. The program's legal and processing costs make it infeasible for use on smaller properties. The FHA mortgage insurance program requires small projects to provide essentially the same documentation as large projects, including a Phase I Environmental report, architecture/engineering certifications, construction cost analysis, mortgage credit analysis, appraisal, market review, and asset management review (financial statements and sample pro forma). Once financed, small properties are subject to the same regulatory and enforcement

regime as large properties, which is disproportionately burdensome and costly for smaller properties operating on significantly lower cash flows and with fewer management staff.

HUD modified the small projects program some time ago, but the modifications were not significant enough to make the program workable. Financing for small multifamily projects actually shares more characteristics with single-family loans, but HUD has not considered altering the small multifamily program to incorporate single-family standards. Further, the program is not included under the Multifamily Accelerated Processing (MAP) program, which provides streamlined processing for most FHA-insured multifamily loans.

#### Small Business Impact

Improving the FHA small projects program would help expand financing options for small multifamily affordable housing developments, which currently are quite limited. The problem is especially acute in rural areas. Many lenders do not provide such financing because it is relatively costly to underwrite and service. Community lenders, which typically hold loans in their portfolios, provide less favorable terms than for larger loans.

#### Possible Cures

NAHB recommends that HUD implement a viable small multifamily project program under the MAP program to speed processing times and reduce excessive documentation requirements. In addition, HUD should streamline current underwriting standards, taking into consideration the incorporation of the standards for the single-family Section 203(b); the primary single-family mortgage insurance program. HUD should also develop an appropriate set of enforcement standards for smaller properties to reduce costs while ensuring the properties are maintained in good physical and financial condition.

### **Section 8 Housing Choice Vouchers and Seniors Assisted Living Facilities**

#### Background

Currently, it is extremely difficult to use Section 8 Housing Choice Vouchers in Assisted Living Facilities (ALFs). While vouchers may be used for ALFs, the program rules do not recognize the higher costs associated with building and operating such facilities.

In 2000, HUD issued Notice PIH 2000-41, which implemented Section 523 of the "Preserving Affordable Housing for Senior Citizens and Families into the 21<sup>st</sup> Century Act." Notice PIH 2000-41 confirms that a public housing authority (PHA) may provide Section 8 housing voucher assistance for seniors who live in an ALF. The intent of the law is to use vouchers to supplement the Medicaid Home and Community Based Waiver Program, which pays for community based or home residential care for Medicaid-eligible frail elderly persons at risk of being placed in hospitals, nursing homes or intermediate care facilities. Use of housing vouchers to assist with rental costs, along with the waivers, is intended to help frail elderly individuals obtain both housing and the necessary services needed to remain independent and avoid premature institutionalization.

HUD's Notice sets the rules under which vouchers may be used in ALFs to cover all or portions of the assisted living unit shelter costs. (Section 8 housing voucher funds may not be used to pay for meals or services.) However, use of the vouchers in ALFs has been problematic, because the program rules for using housing vouchers in ALFs are the same as for any other rental housing. In particular, the rent must be within the local PHA's rental payment standard and Fair Market Rent (FMR) limits. HUD calculates FMRs based on surveys of rental units in the conventional market, although ALFs are not included in the survey. In many areas, the FMRs and rental payment standards are too low to permit the use of the vouchers in ALFs. Modifications to the current rules for use of vouchers in ALFs should be made to ensure that low-income seniors can live in such facilities.

#### Possible Cures

NAHB recommends that HUD re-evaluate the methodology for determining FMRs and payment standards used for ALFs. For example, HUD could conduct separate rent surveys for ALFs to get data specific to these types of units and then set a separate FMR for ALFs. Alternatively, HUD could adjust the regular FMRs by some factor to account for the differences in rents (excluding non-shelter costs) between ALF units and conventional market units. HUD could also allow PHAs to set higher payment standards for ALFs than currently permitted.

#### **Management and Oversight for RHS Multifamily Properties**

##### Background

The U.S. Department of Agriculture's Rural Housing Service (RHS) Section 515 multifamily rental housing program provides affordable housing for low-income residents in rural areas across the country. The portfolio consists of over 15,800 properties, but the properties are aging. Inadequate and misguided management oversight and program standards have resulted in severe deterioration of the RHS multifamily rental housing portfolio. Most of these properties are in need of substantial rehabilitation but lack adequate reserves to pay for such improvements. These properties are small in size and typically are owned by small entities or individuals.

The preservation of the RHS' Section 515 properties has been hampered by lack of oversight of management practices, burdensome requirements for property sales and/or transfers, and inadequate funds for repairs and rehabilitation. Program rules are applied inconsistently, depending on the field office, which creates confusion and uncertainty. There is a critical need to identify the scope of the problem and take corrective actions. RHS began this process two years ago and is currently evaluating the recommendations of a consultant who was hired to evaluate the needs of the portfolio and develop recommendations for action. RHS is also in the process of responding to comments on its interim final rule updating its multifamily program regulations, including management practices. However, NAHB believes the RHS will need to implement even stronger reforms than it has currently proposed in its interim final rule.

##### Possible Cures

NAHB recommends that the RHS establish a uniform system for monitoring Section 515 property management companies. Management fees should be based on a standard bundle of services, with provisions for add-on fees, as appropriate, and the RHS should be required to approve all management fees. In addition, the RHS' ability to remove bad property managers and/or owners should be strengthened by establishing clear performance standards for managers and owners and developing a list of actions that trigger the removal of bad property managers or owners. Finally, the RHS should streamline the process for transferring Section 515 properties, particularly when the agency has an opportunity to facilitate the transfer of a troubled property or one that needs immediate attention to health and safety issues.

### **Clean Water Act NPDES Storm Water Permitting Program**

#### **Background**

The Clean Water Act (CWA) was enacted to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." To achieve this goal, the U.S. Environmental Protection Agency (EPA) developed the National Pollutant Discharge Elimination System (NPDES) program. The NPDES program prohibits the discharge of pollutants into "waters of the United States" without a permit. When first enacted, the permit requirements were designed to limit the effluent from industrial processes and municipal sewage treatment. Once these sources were under control, Congress and EPA broadened the program's scope to include more elusive sources, including storm water discharges and municipal runoff. Despite the vast differences between industrial and storm water discharges, EPA pigeon-holed storm water into the ill-fitting industrial discharge program.

Since 1992, EPA has required NPDES permits for storm water discharges from industrial, municipal, and construction sources. While EPA administers the NPDES program, the CWA allows EPA to delegate the program to the states. To date, 45 states have assumed this authority and administer the program (e.g., issue permits, conduct inspections and initiate enforcement actions), although EPA maintains an oversight role. Importantly, the delegated states' programs must be consistent with EPA's federal requirements and may be more stringent if the state so desires. In the other five states (AK, ID, MA, NH, NM), EPA is the permitting authority. In addition to the federal program, many states and localities have their own separate programs designed to control erosion and storm water runoff. Thus, in many areas of the country, construction site operators must comply with multiple storm water regulations, all aimed at improving water quality, yet rarely coordinated to optimally meet that goal. Further, due to the structure of EPA, with the enforcement and compliance personnel being in a different office than the water program staff, implementation of the NPDES program is inefficient and cumbersome, not to mention oftentimes a lack of coordination between the two.

The NPDES program requires a permit for any construction activity that disturbs one or more acres of land or that disturbs a single lot located within a subdivision, regardless of the size of the lot. For home builders, the NPDES program oftentimes means obtaining a second or even third permit to discharge storm water from the site. In order to be covered by the permit,

construction site operators must prepare a Storm Water Pollution Prevention Plan (SWPPP) and file a Notice of Intent (NOI) with EPA or the state permitting agency, then comply with the terms and conditions of the permit (i.e., install and maintain Best Management Practices conduct biweekly inspections, record any plan changes, etc.). While these requirements may seem simplistic, they are quite complex and burdensome. In fact, EPA's guidance for writing the SWPPP alone is over 40 pages long and after following it, a permittee still has no guarantee that he or she is in compliance.

Despite EPA's acknowledgment that there is no mechanism in place to demonstrate compliance, the agency has, nonetheless, identified storm water enforcement as a continuing priority. While enforcement plays an important role in ensuring the success of the NPDES program and improving the health of the nation's waters, if it is to be effective it must be predicated by education and compliance efforts, and be focused, timely, predictable and tied to on-the-ground environmental impacts. To date, however, this has not been the case. EPA's Office of Compliance Assistance and its Office of Enforcement appear to have a strained relationship with one another and the Office of Water, making it impossible to follow the traditional "compliance first, enforcement second" process envisioned by most environmental statutes. Further, EPA regularly takes an overzealous approach to instigating investigations and seeking out actionable violations, oversteps its agreement with delegated states, and levies significant fines for paperwork violations that have little bearing on environmental protection. The aim of the CWA is to improve the quality of the nation's waters. To date, EPA's storm water enforcement actions against the building industry have failed to demonstrably contribute to achieving this goal.

#### Small Business Impacts

In 2003, EPA conducted an information request regarding the cost of filling out the NOI and completing the SWPP. (*See 68 Federal Register 14972 (March 27, 2003), EPA ICR No. 1842.04.*) In that request, EPA estimated that filling out an NOI and completing a SWPPP would take about 39 hours and, using EPA's "Estimated Total Annual Cost" and "Estimated Total Annual Hour Burden," would cost approximately \$1,300. This equates to an hourly rate of about \$33. Based on the experience and input of NAHB's members, we believe this burden to be underestimated by 2-3 times. The following responses were obtained when NAHB asked several of its members about EPA's estimates:

- A Home Builders Association in Bettendorf, IA reported, "An engineer in the Quad Cities who does this work says a lot of it depends on the site. He said 39 hours is a reasonable time estimate. The \$1,300 is not. The lowest hourly rate in his firm is \$60 per hour. It can range up to \$100 for one of his Senior Engineers. So here in the Quad Cities 39 hours of engineering on this paperwork runs somewhere between \$2,300 to \$3,900."
- A developer in Virginia stated, "It will cost us close to \$5,000. The engineer's time is probably only about 40 +/- hours, but engineers cost at least \$100/hr in this area."

- From a developer in Georgia: “If I try to average a subdivision of about 40 single family detached lots, I spend about \$2500 for providing narrative, data, and certification for only the NOI. The pollution prevention plan then ranges from \$4000 to \$7000.”

Clearly, the direct impact of the NPDES program on small businesses is significant. It is estimated that storm water compliance adds an additional six percent to land development costs.

Further, because the majority of state and local governments have laws, ordinances and regulations regarding the control of erosion and storm water from construction sites, in most instances, the NPDES program requirements are *in addition to* these mandates – creating duplication and confusion over which rules to follow. Similarly, by having more than one authority looking over one’s shoulder, construction site operators can be in the unenviable position of never being able to satisfy all masters. For example, even if a state or local inspector is satisfied that a construction site operator has sufficiently complied with the requirements, EPA can override that assessment and find the operator in violation. Considering that the goal of the NPDES program is to improve water quality, if all it is doing is multiplying paperwork and duplicating effort, its effectiveness is suspect.

Finally, by regulating storm water under the NPDES program, EPA has inappropriately allowed storm water discharges to be subjected to the numerous standards and limitations of the CWA, including effluent limitation Guidelines (ELGs) and Total Maximum Daily Loads (TMDLs). This means that certain small businesses will be required to install additional controls or undertake additional measures to meet ELGs or TMDLs, adding costs, delays and another layer of uncertainty to the permitting process – burdens resulting solely from the agency’s wrongful application of the NPDES program to storm water discharges.

#### Possible Cures

EPA has the authority to address many of the challenges associated with the NPDES storm water program to reduce the impacts on small businesses. Specifically, the agency could revise its regulations to:

- Enable construction site operators who receive notices of violation to correct the alleged violation(s) before enforcement actions are initiated.
- Adopt a separate permit for operators who are constructing a single structure (i.e., residence) on a single lot either within or outside of a subdivision. Developing a separate permit for these operators would further clarify their requirements, reduce needless confusion, and result in higher compliance rates as operators are better able to understand what is required of them.
- Consolidate federal, state and local program authority into one entity (including issuing permits, completing inspections and undertaking enforcement actions) so there will be less overlap and more consistency.
- Expand the use and availability of the Expedited Settlement Offer (ESO) to ensure it is a viable alternative to going through the standard enforcement process, which is lengthy and includes higher fines, complex penalty calculations, and proceedings that often require the permit holder to obtain the assistance of a lawyer.

- Establish a checklist of other methodology that builders and developers can use to demonstrate that they are in compliance with the NPDES requirements.

#### **Clean Water Act Section 404 Wetlands Permitting Program**

##### **Background**

The U.S. Army Corps of Engineers (Corps) and the EPA jointly administer the wetlands permitting program under Section 404 of the CWA. Section 404 prohibits the discharge of dredged or fill material into "waters of the United States" and "wetlands" without a permit. Because the Section 404 program has, over the years, become a stand in for a wetlands protection program, the Corps and EPA have continuously broadened their interpretations of their authority to encompass more and more areas and activities. For example, the regulatory definition of wetlands is so broad that it includes areas that look exactly like dry land but are inundated by water for only several days a year, and the term "discharge" has been interpreted to include even the incidental amount of material that falls off the lip of a backhoe bucket during excavation activities. Further, federal jurisdiction has been pushed so far as to include not only those "waters of the U.S." that we all agree should be under federal jurisdiction, but also the entire drainage network including common man-made ditches. Thus, despite the intended limits of the program to include only those activities that *both* constitute filling *and* occur in 'wetlands' or waters, the Section 404 program encompasses vast areas that can be scarcely discerned from their upland counterparts and an array of activities that hardly constitute an addition of materials.

Because of the broad interpretation of what constitutes a "wetland," a "discharge," and a "water of the U.S.," NAHB's members routinely are required to obtain Section 404 permits to complete their developments and construct housing. Of the two kinds of permits available, individual and general, most members try to qualify for the streamlined general permits, which allow various activities to occur in wetlands if they result in only minimal impacts on the environment. Congress has directed the Corps to make general permits available as a means to allow developers around the country to perform similar activities without the delay that usually accompanies the issuance of individual permits. Individual permits, on the other hand, oftentimes take years to obtain as they require extensive scrutiny, plans, and paperwork.

To obtain an individual permit, an applicant must first obtain a jurisdictional determination which depicts the wetlands boundaries on the property, nearly exclusively at the expense of the applicant through hiring wetland consultants. Then the applicant must obtain a state water quality certificate to show that the proposed discharge will not cause or contribute to a violation of any applicable water quality standards. Once the water quality certification is obtained, the permit application is evaluated to ensure that the applicant has avoided and minimized any impacts. In this process, the Corps has the prerogative to review and alter an applicant's land use decisions, such as the number of lots and/or the lot configuration and intended building footprint. Finally, the applicant must provide the Corps with an approvable mitigation proposal to offset any environmental impacts of the discharge, often costing tens to hundreds of thousands of dollars.



While the Corps likes to represent this program as being straight forward, in reality, it is rife with uncertainty, cumbersome paperwork requirements and lengthy permitting delays. In fact, landowners who do not believe an area should be regulated as a wetland cannot challenge this decision in court until they maneuver through the entire permitting process.

#### Small Business Impact

The Section 404 permit program is highly controversial and causes an extremely heavy regulatory burden on small businesses. Three issues continue to drive the Section 404 debate: (1) the geographic areas over which the Agencies can require permits; (2) the types of activities that require permits; and (3) the unmet statutory requirement to provide expedited approvals for activities that only minimally affect the environment.

#### *Regulated Areas*

The Agencies have assumed for over two decades that the CWA grants them authority over virtually all waters and wetlands. The current debate centers on how far the Agencies jurisdiction actually extends (i.e., which waters can they legally regulate).

In 2001, the U.S. Supreme Court specifically ruled in *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001), (*SWANCC*) that the Corps could not extend its jurisdiction over isolated, non-navigable, and intrastate wetlands simply by stating that migratory birds utilize them. Because the decision also held that the CWA grants jurisdiction only over “navigable waters,” we believe the Corps has no jurisdiction over isolated wetlands whatsoever. The Agencies have consistently resisted implementing the decision, and after issuing an Advanced Notice of Proposed Rulemaking (ANPRM) in January 2003, decided later not to move forward with any rulemaking, much to the frustration of the regulated community and many other stakeholders. Since 2001, the Corps has been without firm guidance on where its jurisdiction ends. In the absence of direction, and, as documented in a February 2004 GAO study, the Corps’ districts have implemented inconsistent and nearly limitless views of jurisdiction using poorly defined or undefined regulatory approaches, including an expansive interpretation of their jurisdiction over “tributaries” and “man-made ditches.” See *U.S. Government Accounting Office report GAO-04-297, February 2004*.

The automatic regulation of ditches affects many stakeholders, including states, counties, municipalities, flood control managers, and builders and developers. Every time a developer is required to install a drainage ditch next to a roadway, he or she is establishing an avenue for the Corps to regulate the builder who needs to install a culvert and driveway over that ditch. When one considers that there is an estimated 3.9 million miles of roads nationwide, all of which are required to have adequate drainage, this interpretation has effectively federalized a considerable amount of land. In addition, compounding the permitting requirements, the unpredictability associated with each Corps district having its own rules prevents project managers, land owners and small businesses from knowing how much of a project may be subject to federal control, which

severely hinders successful project planning. Finally, because it is not always easy to identify wetlands or their boundaries, landowners must necessarily hire consultants to help determine, at the onset, whether or not they are subject to the rules

#### *Regulated Activities*

The CWA specifically focuses on activities that cause a “discharge” into navigable waters as the limit of its regulatory jurisdiction and defines “discharge” to mean an “addition” of a pollutant. (33 U.S.C. § 1342, 1344, 1362(12)). In complete contrast to the statute, the Agencies settled *North Carolina Wildlife Fed’n v. Tulloch*, No. C90-713-CIV-5-BO (E.D.N.C. 1992), by agreeing to amend their rules to regulate landclearing and excavation (i.e., removal) activities.

Plainly speaking, the *Tulloch* Rule defines “incidental fallback”, or the redeposition of any particle (e.g., any granules of soil that might fall off the lip of the bucket of a backhoe being used to remove material from a wetland), as a “discharge.” There have been two Federal Court decisions, *American Mining Congress v. U.S. Army Corps of Eng’rs*, 951 F.Supp. 267 (D.D.C. 1997), and *National Mining Ass’n v. U.S. Army Corps of Eng’rs*, 145 F.3d 1399 (D.C. Cir. 1998), that have found the *Tulloch* Rule to be inconsistent with the statutory language of the CWA. Yet the Corps has continued to advise its field staff to regulate those activities that result in the discharge dredged or fill material as well as those that result in “incidental fallback.” In essence, builders and developers continue to need Section 404 permits if they are discharging to or taking from jurisdictional wetlands or water.

#### *Expedited Approval*

Nationwide permits (NWP) are a category of general permits that are universally applicable and may authorize certain types of activities to occur in wetlands or waters of the U.S. if those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts. Congress authorized the issuance of general permits in 1977 with the statutory directive when the recognized the need for a viable remedy to reduce the enormous administrative burden on both the agency and the applicant of issuing individual permits.

While NWPs have been issued and reissued since that time, each time they have been reauthorized the Corps has made them less useful by placing severe limitations on the activities and locations for which the permits may be used. Likewise, the Corps has made them more difficult to obtain by attaching more onerous conditions such as buffer requirements, increased paperwork and drawings, and severe restrictions on the acreage of prospective impacts. This has resulted in a NWP that authorize such miniscule impacts as to be totally useless or that end up looking more like an individual permit than a “streamlined” NWP. In fact, according to a study completed in 1999, the average cost to obtain a NWP was nearly \$29,000.

The Agencies' broad and unlawful interpretation of the types of activities and geographic extent of their regulatory jurisdiction, as well as the lack of expedited approvals for activities that only minimally affect the environment collectively represent an unlawfully heavy burden on firms involved in the building industry. The results of these issues are two fold: 1) permits are now necessary for projects that simply should not be regulated and 2) permits are costly and difficult to obtain. These results cause costly time delays, project revisions, and mitigation activities that directly affect viability of many projects and ultimately their small business proponents.

#### Possible Cures

The Agencies can take a number of actions that will remove the problems described above and alleviate the undue heavy regulatory burden on small businesses. The resolutions to the issues involve the revision of the regulations implementing the Nation's wetlands permitting program. Specifically, the regulations need to be revised to:

- Implement the *SWANCC* decision and specify that isolated, non-navigable, intrastate wetlands are not, under any circumstances, under the program's regulatory jurisdiction and, specifically, that all man-made ditches are not subject to federal jurisdiction;
- Clearly define the terms "adjacent", "tributary" and other related terms in the context of the CWA such that lawmakers, home builders, land owners, and field staff can consistently agree upon the geographic extent of the regulatory jurisdiction of the wetlands permitting program; and
- Comply with the CWA statutory mandate that grants regulatory jurisdiction only over activities that result in "discharges" to waters of the U.S. and clearly indicate that the agencies have no authority over activities that result in "incidental fallback;"
- Implement the statutory mandate that directs the agencies to enact a NWP program that demonstrably reduces the administrative burden on permit applicants caused by the wetlands permitting program.

#### Endangered Species Act Critical Habitat Designations

##### Background

Under the Endangered Species Act (ESA), the U.S. Fish & Wildlife Service (FWS) and NOAA Fisheries (formerly the National Marine Fisheries Service), collectively referred to as the Services, are required to designate critical habitat for any threatened or endangered species listed under the Act. Because Congress intended critical habitat to encompass a limited geographic scope, the ESA restricts critical habitat to those "specific" areas "occupied by the species at the time it was listed" and on which are found physical or biological features "essential" to the species' conservation. Despite this mandate, the Services often failed to engage in the rigorous scientific and economic analyses required by the Act. This is because, historically, the Services routinely failed to designate critical habitat until under a court order to do so, often citing the lack of data or staffing challenges as the reason for their actions. As a result, the Services have regularly and improperly included huge swaths of historic, potential, and unoccupied habitat areas within the "critical" habitat designation. To make matters worse, the Services have failed

to provide either the public or the regulated community access to data relied on as the basis for their critical habitat designation. The following illustrate the problem:

- *Red-Legged Frog*—4.14 million acres designated as “critical” throughout 28 California counties.
- *Pygmy Owl*—1.2 million acres proposed to be designated as critical habitat in two southern Arizona Counties. The Services determined that this was the amount needed to protect the 40 pygmy owls known to exist in southern Arizona. In short, FWS determined, with no scientific support, that each known pygmy owl needed 30,000 acres for its conservation. The Services have also refused to provide NAHB or the public access to the pygmy owl location information relied on by the Services to designate critical habitat.
- *Salmon*—designated critical habitat covers “all river reaches accessible to listed [salmon] within the range” of the fish. The final designation rule explains that salmon critical habitat “consists of the water, substrate, and adjacent riparian zone” of over 150 watersheds, river segments, bays and estuaries throughout northern California, Oregon, Washington, and Idaho. No effort was made to quantify or otherwise specify the identify areas found essential to Salmon conservation.
- *Coastal California Gnatcatcher*—513,650 acres designated as critical habitat covering some of the most expensive real estate in the country, in Los Angeles, Riverside, San Bernardino and San Diego Counties. By the Service’s own admission it included developed areas and “other lands” that are “unlikely to contain the primary constituent elements” essential for Gnatcatcher conservation. The Services also failed to identify “core populations” of Gnatcatchers that were being protected.

Similarly, under Section 4(b)(2) of the ESA, the Services are required to conduct a comprehensive economic analysis and to exclude from the critical habitat designation those areas in which the benefit of exclusion (i.e., the costs) outweighs the benefit of inclusion (i.e., the biological benefits to the species). Historically, however, the economic analyses performed by the Services have failed to consider the full economic impact of the designations and their resultant section 7 consultations (i.e., the project approval process that landowners must complete prior to conducting activities on affected properties). More egregiously, until recently, the Services maintained that there was no additional cost from the designation of critical habitat separate and apart from economic costs due solely to the listing of a species under the ESA. Several courts have ruled against the Services’ position, yet the Services have yet to establish a set methodology for completing the required analyses. In the absence of guidance, the Services continue to designate areas that exceed their authority.

The scope of the designation is important because, once designated, the federal agencies are required to consult with the Secretary on any activity that is authorized, funded, or carried out by a federal agency that may *jeopardize* the continued existence of any endangered or threatened species or result in the *destruction or adverse modification* of that species’ critical habitat. What is not clear in this directive, however, is what exactly constitutes “jeopardy” or “adverse modification.” While the Services have traditionally treated these thresholds as one and the

same, the adverse modification regulation has been declared invalid in two separate circuits since 2001. Despite these rulings, the Services have yet to clarify this terminology.

Finally, in areas of the country affected by multiple critical habitat designations covering the same geographical areas, landowners often invest significant time and resources in developing voluntary comprehensive habitat conservation plans (HCP) in an effort to protect threatened species. However, they face losing the protections/advantages of the HCP if a critical habitat designated is overlain on top of the same area covered by an HCP. While the Services have excluded HCPs from most of their critical habitat designations, there is no policy to do so, leaving landowners with little incentive to invest both the time and financial resources necessary to develop comprehensive HCPs to protect the same species that is intended to receive protections under a critical habitat designation.

#### Small Business Impact

For developers and builders, the designation of critical habitat means projects can be delayed and require extensive mitigation if they are located in designated critical habitat. For example, if a builder proposes a project that both modifies critical habitat and requires a federal permit (like a Section 404 wetlands permit from the Corps), the permitting agency must consult with the Services to ensure that any impacts are minimal. Additionally, projects within designated critical habitat are typically ineligible for Nationwide Permits under Section 404 of the Clean Water Act. Finally, by definition, critical habitat requires heightened management considerations, which means that projects occurring in critical habitat will be the focus of greater scrutiny by both the Services and environmental groups. In the end, small businesses and landowners suffer from lower density requirements, mitigation costs, project delays, and red tape costs of negotiating for a permit.

For example, the FWS recently proposed a critical habitat designation in Tucson, Arizona. The cost estimate developed by FWS adds \$7,000 to \$12,000 per home, due solely to the designation of critical habitat, reducing each developer's revenue by 3 to 8 percent and the average builder's profits by 50-80 percent. Similarly, according to a March 2004 GAO Report small builders and homeowners wanting to construct docks in Lake Washington near Seattle had their permit turn-around time increased from 2-3 months to 2 years due to the consultation requirement associated with the critical habitat designation for salmon. This delay effectively increased permitting costs so that they now account for about 33% of the construction costs for a typical dock, versus the 5% that they represented prior to the consultation requirement. (See U.S. Government Accounting Office report *GAO-04-93, March 2004*.) These problems are not limited to Arizona and the Pacific Northwest. Currently, California has approximately 33% of the state's landmass covered by at least one critical habitat designation. Often the same geographic area can be affected by multiple critical habitat designations for several different species, thereby increasing permit review delays and the likelihood of permit denials. Because there are currently over 2,000 species listed as endangered, the designation of critical habitat is clearly significant.

#### Possible Cures

Administratively, the Services could take four steps to resolve the problems small businesses face as a result of critical habitat designation by issuing guidance/regulations that:

- Establish a standard methodology for designating critical habitat, which outlines the factors that the Services are required to consider, such as determining primary constituent elements, defining “essential,” how to consider exclusions, when to consider “unoccupied” areas, proper documentation, etc.
- Establish a standard methodology for conducting the requisite economic analysis and determining when particular areas should be excluded from a given critical habitat designation, including defining the geographic scope, assessing level of impacts, determining which economic sector(s) to examine, etc.
- Exclude areas already subject to HCPs or other voluntary conservation measures from the designation of critical habitat, as allowed under 4(B)(2) or 3(5)(A) of the ESA since these are already adequately protected.
- Clearly define “adverse modification” and “jeopardy.” While “jeopardy” and “adverse modification” are both part of the ESA’s larger “conservation” rubric, they arguably do not impose the same standards for protection or regulate the same activities. As the courts have found, they are different concepts, and need different definitions both in regulation and in practice. The Services should address this conflict through a new rulemaking.
- Create a clearinghouse or other mechanism to provide public access to the information relied on to establish the boundaries of each critical habitat designation during the comment period.

Madam Chair, I thank you once again for the opportunity to share with you some of the challenges that those of us in the home building face on a daily basis. We take pride in the work we do and in those we employ to help us carry out that work. Unfortunately, all too often, the cost of doing business means that there are fewer jobs in our industry. I look forward to working with you to find ways to reduce the unnecessary regulatory burden we face so that we can put more people to work building houses for the American people. Thank you.



**Statement of Donald Wilson  
President, Association of Small Business Development Centers**

**Before the Subcommittee on Workforce, Empowerment, and Government  
Programs  
Committee on Small Business, U.S. House of Representatives**

**Hearing on Removing Obstacles to Job Creation: How Can the Federal  
Government Help Small Businesses Revitalize the Economy?**

**April 21, 2005**

Chair Musgrave, Ranking Member Lipinski and Members of the Subcommittee, I am Donald Wilson, President and CEO of the Association of Small Business Development Centers (ASBDC). ASBDC's members are the 63 State, Regional and Territorial Small Business Development Center networks comprising America's Small Business Development Center Network.

SBDCs are located in all 50 states, the District of Columbia, Puerto Rico, The Virgin Islands, Guam and American Samoa. With nearly 1,000 centers nationwide, America's SBDC network is the Federal Government's most productive management and technical assistance program for small business. It is a unique partnership that includes Congress, the SBA and the private sector, as well as the colleges, universities and state governments that receive SBDC grants and manage the SBDC network.

I would like to thank you, Chair Musgrave and members of the Subcommittee, on behalf of the ASBDC and the nearly 6,000 dedicated men and women who are a part of America's Small Business Development Center Network, for allowing the Association to testify at this important hearing on Removing Obstacles to Job Creation.

I will try to focus my comments on job creation in the small business sector and self-employment. As many on the committee are aware, small businesses create approximately 75% of the net new jobs generated annually and represent 99% of all employers. It is appropriate, therefore, that, when we are talking about job creation and obstacles to job creation, we should be focused on the small business sector of the economy.

And we should be concerned about job creation and obstacles to job creation because frankly we are not generating sufficient jobs in this country. While it is true that job creation in this country is at a higher level than other industrialized countries, the level of job creation has insufficient to provide jobs for all those who want and need a job. It is stunning to realize that at the end of March 2005 we had 389,000 fewer private sector jobs in the economy than we did in March of 2001.

Considering that small businesses create 75% of net new jobs, policy makers should be focusing on what steps need to be taken to foster job creation in the small business sector.

We know that payroll taxes dampen employment in the small business sector. We know that high employee health insurance costs are causing distress for small businesses. And we know that the cost of complying with federal, state and local regulatory requirements is an enormous financial burden for small businesses.

Unfortunately, during my 30 years in this city none of these major impediments has improved. In fact they have worsened. Payroll taxes now represent the major tax burden for 70% of the population. The cost of hiring new workers due to payroll taxes is a serious impediment. Payroll taxes have risen steadily: from a tenth of the federal budget in the 1950s to over a third today. And yet, we hear every day that Social Security is not secure and that Medicare will soon be running an enormous deficit. OMB Director Bolton said in January that Social Security taxes would have to double if we do not reform the system. It is not realistic, therefore, to expect that the payroll tax burden on small business owners will decline any time soon if ever.

Health insurance costs continue to escalate at a very rapid rate. Health insurance cost increases have far exceeded the rate of inflation over the last three decades. Employers continue to bear the bulk of the burden for employees health insurance cost. However, to remain profitable businesses are increasingly shifting these cost to employees. Between 2000 and 2003 the cost to an employee to insure his or her family increased 49%. And frankly I do not encounter any small business owners who really believe the situation is likely to improve any time soon.

And the number of federal regulations just continues to increase. The Federal Register every year runs about 70,000 pages with very little if any reduction despite all the rhetoric. And there are major efforts being made to try and improve the situation, ranging from SBREFA reform, to the efforts by Dr. Graham at the White House and Tom Sullivan at SBA. There is a sincere effort to make regulations more small business friendly. But the sheer number of regulations with which small businesses must comply is staggering and increasing every year.

And there is probably only so far we can go with tax relief other than payroll taxes in light of the current size of the federal deficit.

How then can we make a meaningful difference to help small businesses? One sure way is to help them manage their businesses better to increase the likelihood of their surviving

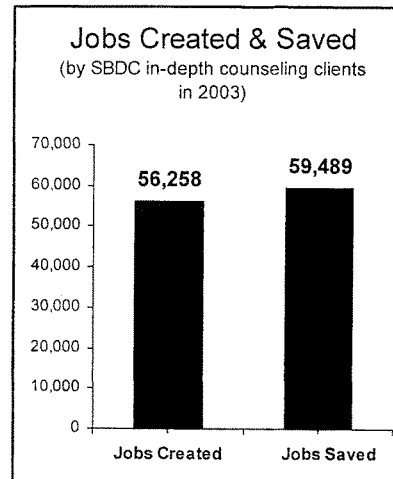


and growing and hiring employees. Dun and Bradstreet has suggested in the past that the major reason small businesses fail is a lack of management expertise. It is not lack of capital, although access to capital is important. SBDC counselors see clients every day who want a loan when that is not what they need. They need to understand cash flow and cash flow management to avoid going deeper into debt.

America's SBDC Network has a proven record of helping its clients start and grow their businesses, thereby contributing significantly to job growth in the small business sector of the economy.

- In the sluggish economy of 2003, as larger businesses downsized, SBDC in-depth counseling for small businesses generated 56,258 new full time jobs and helped save an additional 59,489 jobs.
- A new job is created in the United States by an SBDC in-depth counseling client every nine minutes.
- Businesses that received in-depth SBDC counseling experienced 25 times the job growth of average businesses (10.2% compared to 0.4% for U.S. businesses in general) in 2003.

The SBDCs help small businesses and aspiring entrepreneurs create new jobs by removing one of the biggest of all the obstacles to job creation -- the lack of management and technical knowledge about how to start and grow a small business. More than 50% of all pre-venture SBDC in-depth counseling clients start new businesses. Between 2002 and 2003, SBDC in-depth counseling clients started 15,157 new businesses.



To put it simply, Madame Chair, great cooks who want to open their own restaurants need to know about more than how to prepare good food -- they need to know about bookkeeping, marketing, human resource management, regulations ( local state and federal), and more. In short, they need all the management and technical knowledge that SBDCs provide small business owners and aspiring entrepreneurs.

Among the management and technical assistance services they provide, SBDCs provide services in several areas that are of particular concern to small businesses, and to members of the Subcommittee, including export assistance, procurement, manufacturing, capital access and regulatory assistance.

Many SBDCs host specialized International Trade Centers, where small business owners and aspiring entrepreneurs receive individualized, in-depth counseling and specialized training from experts in international trade and export expansion. And because the SBDC International Trade Centers are part of the larger SBDC network, small businesses and aspiring entrepreneurs that seek international trade assistance can also access the many other types of assistance -- from marketing to research -- that they need to make their export businesses succeed. In 2004, SBDCs trained 7,403 small business owners and aspiring entrepreneurs in international trade, and provided counseling on international trade matters to 9,547 clients.

SBDCs offer assistance with government procurement and are often co-located with Procurement and Technical Assistance Centers (PTACs). Services include help with registrations, identifying solicitations and special programs, preparing certification documents and bids, submitting applications, contract administration and contract close-outs. In 2004, SBDCs provided government procurement counseling to 11,681 clients.

America's SBDC network is also responding to the need for management and technical assistance among small manufacturers. Ninety-five percent of American manufacturers are small and medium-size businesses, employing half of all manufacturing workers in the United States, and many of them rely on their local SBDCs for assistance. In 2004, SBDCs provided manufacturing counseling to 21,677 clients.

SBDCs help clients find and obtain financing to start and grow their businesses, which leads to job creation. SBDCs helped in-depth clients obtain an estimated \$2 billion in financing in 2003. Every dollar spent on the SBDC network helped small businesses to access \$10.32 in new capital.

SBDCs help clients navigate the often complex waters of regulatory compliance. The quantity and complexity of regulatory requirements places a serious burden on small businesses, because smaller firms cannot spread the overhead costs of paperwork and staff needed to keep up with regulatory requirements. The Small Business Administration reports that the cost of regulation, paperwork and tax compliance for businesses with fewer than 50 employees runs substantially higher than the cost for firms with 50 to 100 employees, and the average annual cost of regulation, paperwork and tax compliance for businesses with fewer than 500 employees is \$1,600 higher per employee than it is for firms with more than 500 employees.

Although some federal agencies such as E.P.A. and O.S.H.A. have launched regulatory assistance programs, many small business owners and operators are reluctant to turn to regulatory enforcement agencies when they have a regulatory compliance problem. Thus, many small businesses that turn to their local SBDCs for regulatory assistance would never go to an enforcement agency for regulatory compliance assistance.

Although regulatory assistance programs that are run by government agencies can help small businesses understand *what* they must do to comply with government regulations, these programs do not help small businesses understand *how* they can comply in the most

*cost-effective* manner. SBDCs have the experienced business counselors who can help small businesses find the most cost-effective ways to comply with government regulations. Enforcement agencies generally do not.

In the last Congress, the House Small Business Committee reported, and the House overwhelmingly approved, the Small Business Regulatory Assistance Act (H.R. 205). This legislation would establish a four-year pilot program to award competitive grants to SBDCs to provide regulatory compliance assistance to small businesses. With these grants, the SBDCs would form partnerships with Federal compliance programs, provide education and training, and offer free compliance counseling to small businesses.

Unfortunately, despite the Senate Small Business Committee having approved this important legislation in the 107<sup>th</sup> Congress, the Senate's schedule last year did not permit action on this important legislation. Your former committee colleague Congressman Sweeney has reintroduced the Small Business and Regulatory Assistance Act this year as HR 230. We very much hope that you will again support this important legislation, as you have in the past, and that the full Committee will schedule action early in this Congress to enhance the likelihood that the Senate will find time to act on this legislation during the 109<sup>th</sup> Congress.

Madame Chair, the ability of America's Small Business Development Center Network to help small businesses create jobs is limited only by the resources available to the Network. Nationwide, SBDCs provided management and technical assistance to more than 1.3 million small business owners and aspiring entrepreneurs last year. In 2004, SBDC services included face-to-face counseling of an hour or more for 279,905 clients; 1.5 million total hours of counseling; 27,193 group training sessions; and more than 2.1 million total hours of training for small businesses and aspiring entrepreneurs.

However, as a result of declining Federal resources, SBDC services to small businesses owners and aspiring entrepreneurs have been curtailed, and the economic impact of SBDC assistance has been diminished. Last year, for example, due to the need to lay off SBDC counselors and close centers, the number of hours of business counseling provided by the nationwide SBDC network declined by 93,826 compared to the year before -- despite growing demand for SBDC services.

Federal funding for the nationwide SBDC network today is lower than it was in FY 2001, even without accounting for inflation or population growth. Resources for the SBA have declined roughly 40 percent since 2000. I believe the economy has paid a price over the last four years as resources for management and technical assistance to small business owners and aspiring entrepreneurs has declined, certainly in real dollar terms.

It is important to note that Federal funding for management and technical assistance to small businesses is an investment, not a loss for the Federal Treasury. Federal funding for the SBDC program actually generates more revenues than it costs the taxpayer. In 2003, the Federal SBDC appropriation of \$88 million helped SBDC in-depth clients

generate an estimated \$211.6 million in Federal revenue -- a return of \$2.40 in new tax revenues for every Federal dollar spent on the SBDC program.

Small businesses have historically been the engine of economic growth, and their importance to the future of our nation will only grow. Small businesses create roughly 70 percent of the new jobs in our economy and 53 percent of our nation's Gross Domestic Product. A recent article in *USA Today* focused on new research that shows 5.6 million workers age 50 and older are now self-employed -- a 23% jump since 1990.

In an increasingly complex world and a new, global marketplace, small businesses and aspiring entrepreneurs need the kind of management and technical assistance that America's SBDC Network provides. America's Small Business Development Center Network can help small business revitalize the economy, but we need the resources to do the job. In our view, one of the most important things the Federal Government can do for small business job creation is to make management and technical assistance available to every small business that needs it.

I thank you again for allowing the ASBDC to appear before the Subcommittee today. I will be glad to respond to any questions that you, Madame Chair, or other members of the Subcommittee may have.



# **Statement of Associated Builders and Contractors**

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**U.S. House of Representatives  
Committee on Small Business**

**Subcommittee on Workforce, Empowerment and Government  
Programs  
Chairwoman Marilyn Musgrave & Ranking Member Daniel Lipinski**

**April 21, 2005**

**“Removing Obstacles to Job Creation: How Can the Federal  
Government Help Small Businesses Revitalize the Economy?”**

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**SPEAKING FOR THE MERIT SHOP**

4250 North Fairfax Drive, 9th Floor  
Arlington, VA 22203  
703.812.2000 • [www.abc.org](http://www.abc.org)

Associated Builders and Contractors (ABC) would like to thank Chairwoman Musgrave, Ranking Member Lipinski and members of the Subcommittee on Workforce, Empowerment and Government Programs of the U.S. House of Representatives Committee on Small Business for your invitation to submit ABC's views regarding "Removing Obstacles to Job Creation."

ABC is a national trade association representing more than 23,000 merit shop contractors, subcontractors, materials suppliers and construction-related firms within a network of 80 chapters throughout the United States and Guam. Our diverse membership is bound by a shared commitment to the merit shop philosophy within the construction industry. This philosophy is based on the principles of full and open competition without regard to labor affiliation.

ABC members have made a commitment to attract, train and keep individuals who can have a meaningful, quality career in construction. Importantly, we believe policies should be dedicated to keeping workers safe, providing them with opportunities to work on public works, and assuring open doors for training opportunities through vocational education and registered apprenticeship.

#### Construction Industry Facts

Construction has made and will continue to make overwhelming contributions to the economy and the employment rolls in the United States. In 2005, the industry put-in-place projects will be worth over a trillion dollars, according to the U.S. Census. In 10 years, construction projects' put-in-place value has nearly doubled. An industry of this size demands significant people resources.

Of the 5.6 million employer-firms in the United States, more than 12 percent are construction firms, and these companies employ 6.5 million people. Construction is the only goods-producing industry expected to create jobs in the near future. The Bureau of Labor Statistics estimates that construction will need over one million new workers before 2012.

#### Occupational Safety and Health Administration

We strongly believe that worker training and education is the linchpin for advancing Americans in the economy. By example, safety is significantly advanced with worker education and training. Construction is under a pressing demand for more workers and that stress creates an even greater need for better resources for small businesses and their workers from the Occupational Safety and Health Administration and the organizations that serve them. Those partners in safety include trade associations, such as ABC.

#### **OSHA Outreach**

ABC works with OSHA in a number of ways to enhance education opportunities for small businesses and their workforce. In addition to ABC's programmatic relationships, members of ABC serve on the agency's Advisory Committee on Construction Occupational Safety and Health.

OSHA engages of number of means to reach businesses and train workers. One of these is the Susan Harwood Grants which has served many workers, including those of ABC member firms. ABC was an early participant in OSHA's Strategic Partnership Program. Today no national trade association in the construction industry participates in the partnership program. However, that Partnership Program has been recently revamped in a way that will limit small business participation. By essentially mandating numerous inspections for a partner company, many of the best companies have or will turn away from the program. OSHA's inspection resources are limited, so expending them on the best firms seems impractical.

Currently, ABC administers OSHA's Voluntary Protection Program-Challenge Pilot. The hope for this program is that businesses will be prepped for OSHA's Voluntary Protection Program, which has traditionally attracted very large companies. However, questions remain whether the tremendous paperwork burdens associated with the program will discourage small businesses from participating.

Larger companies already have the staffing and other resources to understand the regulations and keep abreast of new agency directives. Their participation is easier because the resources are already dedicated. However, these initiatives, which require additional paperwork, do not easily fit small firms.

OSHA should be focusing its resources on the means most effective in reaching small businesses and their workers, especially for the most serious hazards. Education and enforcement must be partnered to achieve this objective.

#### **Enforcement**

OSHA should focus its inspections on the most frequent causes of fatalities and serious injury. OSHA's 2003-2008 Strategic Management Plan indicates that the construction's industry fatality rate remained virtually unchanged from 1992 to 1999 and dropped in 2000. However, the agency only made a slight reference to the fact that workplace violence and automobile accidents were primary culprits and were not under OSHA's jurisdiction as a general rule. In fact, when OSHA's investigated construction fatalities are reviewed, the rate has fallen from 13.5 per 100,000 workers in 1994 to 11.3 per 100,000 in 2002. (Auto accidents and workplace violence are not investigated by OSHA.) The cause of these fatalities are overwhelmingly falls, struck by, caught in/between, and electrical shock (the so-called "big four"). Only 6 percent of the investigated fatalities from 1994 to 2002 were from other causes.

OSHA has set a goal to reduce construction fatalities, but it is unclear what resources are being used to help small and other businesses address the major causes of fatalities that are covered under OSHA rules.

The Strategic Plan emphasizes hazards such as lead, silica, amputations and ergonomics. Unfortunately, the agency as a practical matter does not use the one enforcement policy adopted to increase the number of inspections and focus on the leading hazards in construction. In 1994, OSHA adopted the Focused Inspections Initiatives that was a significant departure from the way previous inspections were conducted. Under focused inspections, a compliance officer would determine if a safety and health program was established and a competent person was implementing the program. If these criteria were met, an abbreviated walk-around inspection was conducted focusing on "the big four." We support focused inspections to achieve better workplace safety for construction.

Additionally, the agency has put forth efforts to advance rulemakings for silica and hearing conservation for construction, and drafting guidance from compliance with the long-existing Hazard Communication Standard. While admirable endeavors, the underlying need for the proposals and products is unclear for the construction industry. Instead, the agency's effort to provide educational materials on major hazards, such as the agency's outreach on power-line hazards, should be duplicated.

### **Recommendations**

ABC would recommend a number of initiatives to improve the compliance and enforcement environment for construction.

First, OSHA inspectors should be trained in the major construction hazards. ABC was among those, including labor unions, to train compliance officers following the adoption of steel erection standards. This joint effort demonstrated the value of sharing information. ABC would support OSHA's request for more training for its employees.

Second, compliance assistance should only be provided by OSHA officials with an in-depth knowledge of the industry. The compliance assistance program is a valuable part of OSHA's portfolio of services but the education for OSHA officials should be enhanced.

Third, OSHA should renew its commitment to focused inspections.

Fourth, OSHA should revise its Strategic Partnership Program that incorporates the unique contribution that national trade associations bring and reduces the burden on small business participants.

Fifth, the Susan Harwood Grants should be fully restored in the upcoming appropriations legislation, and these OSHA grants, which are modest, should be targeted for the causes of the most serious injuries and be dedicated to small workforces.



Finally, ABC strongly supports the recently introduced legislation which seeks to reform the Occupational Safety and Health Administration. We support legislation aimed at improving workplace safety and reducing red tape for small businesses and their employees. The "Occupational Safety and Health Small Business Day in Court Act of 2005" (H.R. 739), seeks to provide small businesses with more time to respond to charges since they are unlikely to be able to afford the fulltime safety directors employed by big corporations. The "Occupational Safety and Health Review Commission Efficiency Act" (H.R. 740), ensure that the right of a speedy trial is guaranteed to small businesses. The legislation increases the number of commissioners on the Occupational Safety and Health Review Commission from three to five so that the required two-commissioner quorum for a hearing is easier to reach. The "Occupational Safety and Health Independent Review of OSHA Citations Act" (H.R. 741), restore the right of small businesses to appeal their case to an independent court if they feel OSHA made an unfair decision in their case. Finally, the "Occupational Safety and Health Small Employer Access to Justice Act" (H.R. 742), will allow small businesses to recover court costs and attorneys fees if they are a prevailing party when challenging an OSHA citation.

If passed, this legislation will alleviate some of the regulatory burdens facing small businesses without sacrificing any safety and health protections. This type of reform is necessary to keep American business competitive in our economy today.

#### Vocational Education and Apprenticeship

Through its chapters, ABC provides extensive training to support apprenticeship programs for craft professionals in the construction industry. Training is structured in diverse ways and with varying resources in order to meet the needs of the local industry. The vast majority of ABC chapters provide support for registered apprenticeship programs that are required for workers on many public construction projects.

ABC chapters offer a wide range of services that advance registered apprenticeship and craft training. Most ABC chapters directly register apprentices (e.g., the chapter administers and operates a registered apprenticeship program with OATELS or SAC). Examples include California, Alaska, Missouri, Florida and New York. Direct registration is not, however, the only model of apprenticeship. Other ABC chapters offer extensive training support to employer-sponsored apprenticeship programs. For instance, in the ABC Virginia Chapter currently trains more than 500 apprentices for its construction firm members. In other parts of the country, such as Colorado and North Carolina, ABC chapters are part of a larger construction consortium that operates apprenticeship programs.

Additionally, ABC chapters partner with local secondary and vocational schools and universities to offer the maximum resources for students. As a result of these varying ways for providing training, ABC chapters and other nonunion apprenticeship programs or training providers have the flexibility to maximize resources and deliver a viable training network for the next generation of craft professionals in construction.

### **Apprenticeship and Craft Training**

Apprenticeship programs are registered with the U.S. Department of Labor's Office of Apprenticeship Training, Employer and Labor Services (OATELS) or a state apprenticeship council (SAC). The SACs are administered in states with a system recognized by the U.S. Department of Labor.<sup>i</sup> ABC's National Model Apprenticeship Standards are registered with the U.S. Department of Labor and include 32 crafts for registered apprenticeship programs. Additionally, a SAC may allow additional crafts for apprenticeship programs.

Apprenticeship, however, is not the sole or even the primary method of training that serves the construction industry. Only a small portion of today's construction workforce is the product of or is currently enrolled as a registered apprentice. Registered apprentices make up no more than 4 percent of the construction workforce nationwide.<sup>ii</sup>

Registered apprenticeship in its current form is a system established to regulate the training of craft workers who are not journeypersons on public construction projects. Under federal law, before becoming a journeyperson, apprentices are required to enter a contract to be indentured in the construction industry with on-the-job and classroom training.<sup>iii</sup> Such programs can last four and five years.

These long-term commitments for indentured apprentices are rooted in a system of construction employment that is no longer prevalent. Instead of working through union halls that determine those that can and will be hired, most construction workers—85 percent—are not members of a union.<sup>iv</sup> Instead of the union hall, the marketplace offers tremendous employment opportunities to most workers. Options in construction include changing employers to command higher pay, advancing to management, and pursuing business ownership.<sup>v</sup> However, workers that do not choose to enter registered apprenticeship programs because of their onerous regulations are prevented from working on public works.

Today's construction industry and its workforce demand more flexible training modules, including short-term, task-oriented training, continuing classroom education, industry-sector-specific training in areas such as modular housing or industrial construction, and license-driven training. Instead of focusing on one craft, employees often cross-train to advance in the industry and increase their wages. In addition, multi-skilled craft professionals may work on a project from inception to completion. This "lattice" training does not neatly fit into traditional apprenticeship.

In addition to shortfalls in the apprenticeship registration process, union-only project labor agreements (PLAs) have worked against apprentices that are not registered with unions. As a result, the market for apprentices has been greatly reduced as merit shop construction contractors are shut out of public work. Union-only PLAs are required in some states for public construction, where the government entity requires that a general contractor restrict workers, including apprentices, to union members or those who go

through the union hall to be hired on a public project. As a result, the field of potential workers is reduced to approximately 15 of the workforce, depending on the local union-membership rate.<sup>vi</sup> Importantly, many registered apprentices are shut-out of working on public works, further eroding the value of the program.

### **Recommendation**

Critical support must be made in public policy to remove roadblocks to participating in registered apprenticeship programs for nonunion contractors and apprentices. States where SACs, and not the U.S. Department of Labor, manage the apprenticeship system have a patchwork of program requirements that are often inconsistently applied or clearly discriminatory against nonunion programs.

ABC recommends that the U. S. Department of Labor assure that all apprenticeship systems under its authority advance open doors for apprentices and apprenticeship programs. No policy by design or by operation should discriminate between or among apprentices or apprenticeship programs based on the type of program management (employer, union, nonunion, association, etc.).

ABC also recommends passage of the “Government Neutrality in Contracting Act” (H.R. 1449) that was introduced by Representative John Sullivan (R-OK). This is a measure that would codify into law President George W. Bush’s Executive Order 13202. Issued by the President on February 17, 2001, the Executive Order bars federal agencies from requiring union-only project labor agreements (PLAs) on any construction project receiving federal funding or federal assistance of any kind. However, it preserves the right of a general contractor to choose to enter into such an agreement on a business-judgment basis.

In addition, ABC supports H.R. 1248. Congressman Sam Johnson introduced “The Government Labor Neutrality Act” on March 10, 2005. This legislation is designed to prevent the practice of awarding federal construction projects based on union affiliation, preserving open competition and government neutrality in contracting for the U.S. construction industry. This legislation amends the National Labor Relations Act to prevent government agencies, an agency acting on behalf of the government, a recipient of a federal grant or financial assistance, a person who has entered into a cooperative agreement with the government or a state or a political subdivision thereof from requiring or prohibiting employers in the construction industry from entering into agreements with labor organizations.

### **Vocational Training**

Supporting ABC’s apprenticeship and craft training efforts is a large network of vocational training facilities and staff. As stated before, construction is a high growth industry with a healthy need for new trained craft professionals. According to a recent study conducted by the Construction Labor Research Council, the construction industry will need an average of 185,000 new workers annually over the next ten years to achieve

equal growth and meet replacement needs. An additional 95,000 workers will be needed annually to replace current industry workers who are expected to retire during the next ten years. These figures comport with estimates from the Bureau of Labor Statistics. ABC and other industry groups rely on the educational vocational infrastructure to educate and provide practical training to these workers of the future.

Legislation such as the Vocational and Technical Education for the Future Act (H.R. 366) is vital in helping the construction industry meet its workforce needs. Nearly all ABC chapters are involved in the training of future and current workers in the construction industry. ABC trains thousands of craft workers across the nation every year through school-to-work, apprenticeship and craft skills upgrade programs. Training programs are offered in conjunction with local ABC chapters and many chapters provide craft training in multiple locations throughout the region that they serve, including the facilities of high schools, colleges and vocational centers.

The Carl Perkins Vocational and Technical Education Act, which is reauthorized in H.R. 366, provides grants for vocational and technical training. This legislation is one of the main vehicles used to fund community institutions, and ABC training programs partner with these institutions to train local workers in construction careers.

#### **Recommendation**

ABC strongly supports H.R. 366 but believes that vocational training funds should serve industries where a demand for new, trained workers exists. However, we have heard complaints that grant recipients do not always use the money to invest in industries where the need for highly trained employees is most pressing. Therefore, ABC supports the funding of vocational training where funds are targeted to high growth industries for job-specific education and training.

#### **Conclusion**

ABC supports government policies and programs that provide small businesses with the training to keep workers safe and the means to educate the construction workforce of tomorrow. ABC appreciates the opportunity to present its views on this important issue.

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<sup>i</sup> The State of California is a SAC state but the U.S. Department of Labor (DOL) also registers apprentices in the state while the Department's derecognition proceeding against the SAC program continues. All other apprenticeship systems are operated exclusively in any given state by either OATELS or SAC.

<sup>ii</sup> According to the U.S. Department of Labor's OATEL in Fiscal Year 2002, there were 170,260 registered apprentices in construction, including 52,797 newly registered apprentices in construction. Registered Apprenticeship Information System (RAIS). The RAIS includes data from a total of 31 states, including all 23 federally-registered programs (Alabama, Alaska, Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Missouri, Michigan, Mississippi, Nebraska, New Jersey, North Dakota, South Carolina, South Dakota, Oklahoma, Tennessee, Texas, Utah, West Virginia, and Wyoming) and 8 state apprenticeship councils recognized by

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OATELS (Arizona, Florida, Kansas, Kentucky, Nevada, Ohio, Pennsylvania, and Rhode Island) and some apprentices in Virginia. Assuming the DOL database only includes conservatively about one-half of apprentices, registered apprentices would represent only 4 percent of construction workers. (The calculation is developed by assuming there are 340,520 registered apprentices nationwide in construction and that they represent 4 percent of the 8.5 million construction workers. See Endnote 11 for employment in construction numbers.)

<sup>iii</sup> Title 29 of the Federal Code of Regulations, Part 29.5.

<sup>iv</sup> Union members represent 15 percent of those employed in construction. Table 3. Union affiliation of employed wage and salary workers by occupation and industry, Union Members in 2004, U.S. Department of Labor, Bureau of Labor Statistics.

<sup>v</sup> Turnover in the construction industry fluctuates as high as 7 percent a month. Job Openings and Labor Turnover Estimates, 2003, U.S. Department of Labor, Bureau of Labor Statistics.

**Statement on**  
**REMOVING OBSTACLES TO JOB CREATION: HOW CAN THE**  
**FEDERAL GOVERNMENT HELP SMALL BUSINESSES GROW**  
**THE ECONOMY?**  
**Hearing before the**  
**THE HOUSE SMALL BUSINESS COMMITTEE**  
**SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT, AND**  
**GOVERNMENT PROGRAMS**  
**on behalf of the**  
**U.S. CHAMBER OF COMMERCE**  
**by**  
**PHIL CLINE**  
**PRESIDENT AND CEO**  
**PSG&R INDUSTRIES, INC.**  
**APRIL 21, 2005**

Chairman Musgrave and Ranking Member Lipinski, members of the Committee, I am Phil Cline, President and CEO of PSG&R Industries, Inc., a West Virginia holding company for many of the small private and public businesses that I own. I am pleased to be able to submit the following testimony for the record on behalf of the U.S. Chamber of Commerce. The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector and region. Over ninety-six percent of the Chamber members are small businesses with fewer than 100 employees. I commend the Committee for its interest in having this hearing to discuss removing obstacles to job creation for our nation's 24 million small businesses.

Over the past decade the importance of small businesses as the foundation of economic growth and prosperity has been unprecedented. As economic statistics confirm, maintaining a healthy environment for small businesses is key to raising our standard of living. Small enterprises and startups are the seed corn for our future economic prosperity.

I am proud to say that over the years I have played my part by starting, buying and growing many small business ventures. Small business ownership is the foundation of my financial success and these entrepreneurial efforts have resulted in many jobs being created.

Unfortunately, the growing importance of private and public small businesses to our economy has been overshadowed by the growth in laws and regulations that impose a disproportionate burden on smaller employers. The cumulative cost of compliance with

federal regulations can be formidable for many small businesses and, in some instances, it can be fatal.

To illustrate this point, I want to relay a story about one of my companies which I ran, operated and owned, Monumental Concrete. This company was in the business of delivering quality concrete to job sites for the use in construction and renovation. In most cases for big pours, concrete is mixed prior to delivery and pumped into trucks that are then unloaded at the site. By using this method, the concrete has an opportunity to increase in temperature before being poured, resulting in the possibility of unwanted quality variances.

At Monumental Concrete, we purchased, at great expense, state of the art trucks that were capable of mixing the concrete to an exact psi at the site, therefore avoiding any quality control issues. Recently, West Virginia decided to change the regulation that governed the size and weight of trucks allowed on public highways. This one regulatory change restricted the use of my new, state of the art, trucks such that they were no longer able to be used profitably. This company is now being liquidated due to this one regulatory change. Even though this was not a federal regulation, it demonstrates how devastating it can be for a company when rules are suddenly changed without taking into account their impact on small businesses.

On the federal front, well-intentioned changes in the regulations governing public companies are having a significant impact on several small enterprises of which I am a significant shareholder. One of these small public companies is Champion Industries, Inc. Champion Industries, headquartered in Huntington, West Virginia, is a commercial printer, business form manufacturer and supplier of office products and office furniture.

The tremendous cost of fully implementing Sarbanes-Oxley for this company, including understanding and implementing section 404 has resulted in a negative financial impact to the shareholders, the very group this regulation was intended to protect. Accounting costs and lawyer fees have increased so much that they have considerably reduced the amount of funds available for distribution as dividends to the stockholders. Due to the considerable burdens that this rule has placed on the company, its board is considering returning the company to its private status. Regardless of what decision is made, this company will face significant challenges in its ability to grow and create jobs.

Additionally, small businesses are increasingly caught up in frivolous litigation crafted to force large settlements, regardless of the small businesses' degree of responsibility for the harm. One frivolous lawsuit can put a small business out of business.

J.H. Fletcher & Co., a private subchapter S company of which I am part owner, is a world class leading custom designer and manufacturer of underground mobile drilling, scaling and roof support equipment. Fletcher products increase operator productivity, while minimizing exposure to many of the risks of underground mining. Our customers

rely on our expert design team, field support personnel, parts and service programs to provide and maintain the productivity and safety while working in mines.

As part of our duty to our customers, we prominently display warning labels on the proper and improper use of many of our products. In one case, a worker was unfortunately hurt on the job by the improper use of one of our roof drills. Despite the fact that a warning was easily visible, clearly described the proper and improper use of the tool, and was seen multiple times by the worker, the court ruled in favor of the worker because he couldn't read.

Cases like this sap product innovation and restrict our company's ability to grow and create jobs. When small businesses owners have to second-guess an out-of-control legal system, they can't focus on core functions of their businesses.

Tort claims cost the nation about \$246 billion in 2003, which is more than double the average cost of other industrialized nations, according to a study by Tillinghast Towers-Perrin. Additionally, from a study by the Chamber's Institute for Legal Reform, small businesses bear 68 percent of business tort liability costs, but take in only 25 percent of business revenue. For a business with \$10 million in annual revenue, the average tort liability cost is \$150,000 per year.

In conclusion, more aggressive regulatory reform measures are needed in order for small businesses to continue to be the job creation engine that we have been in the past. Passage of Chairman Manzullo's bill, H.R. 682, the "Regulatory Flexibility Improvements Act," which would close loopholes in the "Regulatory Flexibility Act of 1980," would be a good first step. Additional liability reform measures are also needed. Our small businesses, especially in manufacturing, cannot remain competitive in a global marketplace when our out-of-control legal system continues to allow judgments similar to the one that my company has experienced.

I appreciate the opportunity to comment on these important challenges facing small businesses. I especially applaud the Committee's interest in having this hearing. Thank you again, Chairman, Ranking Member and members of the Committee.



Council for  
Improving Life  
and the  
Environment

Associations Representing Heating,  
Ventilation, Air Conditioning,  
Refrigeration and Plumbing



**"When a Job Calls, No One Answers"**

*New York Times, May 9, 2004*

**"Construction, Service Sectors Lead Hiring Wave"**

*Chicago Tribune, April 3, 2004*

July 23, 2004

The Honorable George W. Bush  
President  
United States of America  
1600 Pennsylvania Ave.  
Washington, DC 20500

Dear Mr. President:

The above headlines underscore a growing concern that we believe threatens our nation's economic vitality and long-term stability. It is a dichotomy of events. On one hand there is persistent unemployment as individuals scramble to find jobs. On the other hand, many industries have job openings and are searching for skilled individuals to fill these positions.

But something can be done.

The below listed organizations represent the broad spectrum of the nation's heating, ventilation, air-conditioning and refrigeration industry. From major equipment manufacturers to distributors to contractors to service technicians we share a common belief. **We need a change in focus in our nation's educational mission, priorities and funding.** We have the jobs available to employ thousands of individuals, and if you add our partners in other manufacturing and service industries the available job picture could easily reach in the millions.

We share your vision of providing quality education and job opportunities to every American. Unfortunately, there are impediments in place that make achieving that vision extremely difficult. For the past two decades we have seen an erosion of our nation's vocational education system. Attention and resources have been given to the two and four-year college degree programs while vocational education has been delegated to the back-burner. To make matters worse, our nation's educators and counselors have put a stigma on vocational education by classifying such instruction as something less than conventional.

It is time to reverse this trend and remove the perceived stigma associated with vocational education. Our nation's economic strength and our personal quality of life are not built solely on the number of lawyers, doctors and academicians our educational institutions can produce. It also largely depends on the number of skilled professionals that have been trained to manufacture products in our factories in addition to those that can construct, service and repair basic household infrastructure systems such as plumbing, electrical and heating/air-conditioning. **In fact, 60% of tomorrow's jobs start with today's career and technical education.**

4100 North Fairfax Drive, Suite 200, Arlington, VA 22203  
Phone: 703-524-8800, Fax: 703-528-3816

Today's job market and global economy demands that employees are well trained. The basic equipment tools of yesterday will not suffice in today's job market. Knowledge in computer technology, diagnostic sciences, and electronics is a requirement in almost all occupations. The educational system is failing the business and industrial community by not providing (or encouraging) educational opportunities in the multitude of skilled professional careers throughout industry. **Many industries, HVACR among them, have a pent-up demand for trained individuals to place on its employment roles. We want to be, and frankly can be, a solution to the nation's unemployment situation.**

On behalf of the below organizations and the thousands of individuals and businesses they represent, we respectfully request that you and your administration support the development of measures that will allow us to provide meaningful job opportunities to thousands of unemployed Americans. We have requested an appointment with the Secretary of Education and the Secretary of Labor to discuss our concerns and look forward to continuing this dialogue with your administration.

Sincerely,

Heating, Air-conditioning & Refrigeration  
Distributors International



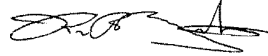
William G. Sutton  
President  
Air Conditioning & Refrigeration Institute



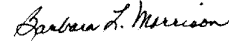
M. Kent Anderson  
President  
International Institute of Ammonia  
Refrigeration



Paul T. Stalknecht  
President & CEO  
Air Conditioning Contractors of America



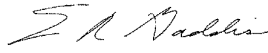
Rex P. Boynton  
President  
North American Technician Excellence



Barbara Morrison  
Executive Director  
Air Movement & Control Association



D.L. "Ike" Casey  
Executive Vice President & CEO  
Plumbing Heating and Cooling Contractors  
Association



Evan Gaddis  
President  
Gas Appliance Manufacturer Association



Don Frendberg  
Executive Vice President & COO